

ARKANSAS CODE OF 1987 ANNOTATED



2013 SUPPLEMENT VOLUME 1

Place in pocket of bound volume

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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Preface

This supplement to the Arkansas Code of 1987 Annotated updates the general and permanent laws of Arkansas through the 2013 Regular Session. It was prepared by the editorial staff of the publisher under the direction and supervision of the Arkansas Code Revision Commission.

Pursuant to Opinion No. 2013-049 of the Office of the Attorney General, acts of the 2013 Regular Session with no emergency clause or specified effective date become effective on August 16, 2013.

Act 267 of 1987 enacted the Arkansas Code of 1987 Annotated into law. The Code manuscript that was adopted by Act 267 contained only those statutes that were passed by the General Assembly prior to 1987. The bound volumes of the Code follow that manuscript and therefore volumes not replaced since 1987 do not reflect 1987 legislation, other than Act 267. Other 1987 acts, as well as acts from subsequent sessions, are treated in replacement volumes or this Supplement. Section 3 of Act 267 provided that 1987 legislation had the effect of acts that amend, repeal, or add to provisions of the Code, and was to be codified accordingly. Acts 1989, No. 990 formally codified the legislation from the 1987 Regular Session, the 1987 First and Second Extraordinary Sessions, and the 1988 Third and Fourth Extraordinary Sessions. All codified acts appearing in the acts disposition table (see Tables volume) for those sessions were officially codified by this act. For the text of §§ 1-12 of the act, see Publisher's Notes to Title 1, Chapter 2, Subchapter 1.

Code sections are fully set out in the Supplement, even where only part of the section has been amended. You may treat a section in the Supplement, therefore, as a complete substitute for the bound volume version.

A list of sources used in preparing this Supplement, as well as a complete list of Code titles, follow this Preface.

Suggestions, comments, or questions about the Code are welcome. You may call our toll-free number, 1-800-833-9844, fax us at 1-800-643-1280, or write: Arkansas Code Editor, LexisNexis, 701 East Water Street, Charlottesville, Virginia, 22902.

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2013 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2013 Ark. LEXIS 256 (May 23, 2013) and 2013 Ark. App. LEXIS 378 (May 29, 2013).

Federal Supplement through June 18, 2013.

Federal Reporter 3d Series through June 18, 2013.

United States Supreme Court Reports through June 18, 2013.

Bankruptcy Reporter through June 18, 2013.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 74, p. 549.

ALR Fed. 2d through Volume 71, p. 197.

Titles of the Arkansas Code

1. General Provisions
2. Agriculture
3. Alcoholic Beverages
4. Business and Commercial Law
5. Criminal Offenses
6. Education
7. Elections
8. Environmental Law
9. Family Law
10. General Assembly
11. Labor and Industrial Relations
12. Law Enforcement, Emergency Management, and Military Affairs
13. Libraries, Archives, and Cultural Resources
14. Local Government
15. Natural Resources and Economic Development
16. Practice, Procedure, and Courts
17. Professions, Occupations, and Businesses
18. Property
19. Public Finance
20. Public Health and Welfare
21. Public Officers and Employees
22. Public Property
23. Public Utilities and Regulated Industries
24. Retirement and Pensions
25. State Government
26. Taxation
27. Transportation
28. Wills, Estates, and Fiduciary Relationships

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

The following User's Guide topics are revised:

Multiple Legislation

Where more than one act in a session affects a section, the resolution and interpretation of the multiple legislation is governed by §§ 1-2-207 and 1-2-303.

Placement of Notes

Where a note pertains to a single Code section, it is usually set out following that section. In many instances, however, a note applies equally to several Code sections or to an entire subchapter, chapter, or title. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a subchapter, chapter, or title, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the subchapter, chapter, or title.

For ease of reference and to save space, all "Effective Dates" and "Preambles" notes for statutes are carried at the beginning of the chapters or subchapters in which the statute is codified.

Look for these "unit-wide" notes between the subchapter, chapter, or title analysis and the first section in that unit

Preambles and Legislative Intent

Depending on the instructions given by the Arkansas Code Revision Commission staff, legislative intent sections from some acts are either codified or carried as notes under sections affected by the act. Preambles are carried as notes at the beginning of chapters or subchapters in which the act is codified.



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TITLE 1

GENERAL PROVISIONS

CHAPTER.

- 1. GENERAL PROVISIONS.**
- 2. THE CODE AND REGULATIONS.**
- 3. STATE SYMBOLS, MOTTO, ETC.**
- 5. HOLIDAYS AND OBSERVANCES.**

CHAPTER 1

GENERAL PROVISIONS

SECTION.

1-1-102. Signature by mark.

1-1-102. Signature by mark.

In addition to the provisions of §§ 4-3-401, 7-5-305, 7-7-308, 27-14-705, and 28-25-103, a signature by mark on a document is legal for the purposes of executing the document if the signature is:

- (1) Made by a person who at the time of signature lacks the ability to:
 - (A) Write; or
 - (B) Sign his or her name; and
- (2) Witnessed by at least one (1) disinterested person.

History. Acts 2009, No. 412, § 1.

CHAPTER 2

THE CODE AND REGULATIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.**
- 2. CONSTRUCTION.**

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

1-2-124. Respectful language — Disabilities.

1-2-115. Code classification and organization not to be construed — Notes, headings, etc., not part of law.**CASE NOTES****Separate Subchapters Not Determinative.**

Fact that the Code Revision Commission placed the statutes pertaining to cable-television companies in a separate subchapter during the codification process did not mean that the intangible personal property of cable-television companies was not subject to ad-valorem assessment

and taxation under § 26-26-1606(b). Falcon Cable Media LP v. Ark. PSC, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

Cited: SubTeach USA v. Williams, 2010 Ark. 400, 373 S.W.3d 884 (2010); McMillan v. Live Nation Entm't, Inc., 2012 Ark. 166, — S.W.3d — (2012).

1-2-117. Severability of provisions of Code.**CASE NOTES**

Cited: Jackson v. Norris, 2013 Ark. 175, — S.W.3d — (2013).

1-2-124. Respectful language — Disabilities.

(a)(1) The General Assembly recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes toward people with disabilities. Many of the terms currently used demean the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members.

(2) The General Assembly finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(b)(1) In any bill or resolution, the Bureau of Legislative Research shall avoid all references to:

- (A) "Disabled";
- (B) "Developmentally disabled";
- (C) "Mentally disabled";
- (D) "Mentally ill";
- (E) "Mentally retarded";
- (F) "Handicapped";
- (G) "Cripple"; and
- (H) "Crippled".

(2) The Arkansas Code Revision Commission shall change such references in any existing statute or resolution as sections including these references are republished or otherwise amended by law.

(3) The Bureau of Legislative Research and the commission shall replace the inappropriate terms in subdivision (b)(1) of this section with the following terms:

- (A) "Individuals with disabilities";
- (B) "Individuals with developmental disabilities";

- (C) "Individuals with mental illness"; and
- (D) "Individuals with intellectual disabilities".

(c)(1) In any administrative rule, a state agency shall avoid the inappropriate terms in subdivision (b)(1) of this section and shall use the terms in subdivision (b)(3) of this section.

(2) Each state agency shall review its rules for uses of the inappropriate terms in subdivision (b)(1) of this section.

(3) If a state agency identifies a use of an inappropriate term under subdivision (b)(1) of this section in a rule, it shall promulgate a revision to the rule to replace the inappropriate term with a term under subdivision (b)(3) of this section.

(4) Each state agency shall complete the review under subdivision (c)(2) of this section by January 1, 2012.

(5) As used in this subsection, "state agency" means any office, board, commission, department, council, bureau, or other agency of state government having authority by statute enacted by the General Assembly to promulgate or enforce administrative rules.

(d) A statute, resolution, or rule is not invalid because it does not comply with this section.

History. Acts 2007, No. 515, § 1; 2009, No. 975, § 1; 2011, No. 98, § 1.

Amendments. The 2009 amendment deleted (b)(3)(D); redesignated former (b)(3)(E) as (b)(3)(D); and made related changes.

The 2011 amendment added (c) and redesignated former (c) as (d); and substituted "resolution, or rule" for "or resolution" in present (d).

SUBCHAPTER 2 — CONSTRUCTION

SECTION.

1-2-208. "Fiscal session" and "regular session" defined.

1-2-205. General severability.

CASE NOTES

Cited: Jackson v. Norris, 2013 Ark. 175, — S.W.3d — (2013).

1-2-208. "Fiscal session" and "regular session" defined.

As used in the Arkansas Code, an act of the General Assembly, and an initiated measure:

(1) "Fiscal session" means with respect to the General Assembly the legislative session in which the General Assembly may consider only appropriation bills under Arkansas Constitution, Article 5, § 5(c); and

(2) "Regular session" means with respect to the General Assembly the legislative session in which the General Assembly may consider any bill under Arkansas Constitution, Article 5, § 5(b).

History. Acts 2009, No. 962, § 1.

SUBCHAPTER 3 — ARKANSAS CODE REVISION COMMISSION

1-2-303. Powers and duties.

CASE NOTES

Authority to Change the Code.

Intangible personal property of a cable television company, including franchise agreements, customer relationships, and good will, was subject to ad-valorem assessment and taxation under § 26-26-1606(b). The words “this subchapter” in § 26-26-1606 should be read to mean “this

act,” as they did prior to changes by the Arkansas Code Revision Commission, and therefore included all companies subject to taxation by the Arkansas Public Service Commission. *Falcon Cable Media LP v. Ark. PSC*, 2012 Ark. 463, — S.W.3d —, 2012 Ark. LEXIS 501 (Dec. 13, 2012).

CHAPTER 4

STATE SYMBOLS, MOTTO, ETC.

SECTION.

- 1-4-101. State flag.
- 1-4-104. Distribution of flags.
- 1-4-126. State butterfly.
- 1-4-127. State grain.
- 1-4-128. Lowering of state flags when a member of the armed services is killed in action.

SECTION.

- 1-4-129. State grape.
- 1-4-130. State nut.
- 1-4-131. Artist laureate.
- 1-4-132. Poultry Capital of the World.

1-4-101. State flag.

(a)(1)(A) The official state flag shall be a rectangle of red on which is placed a large white diamond, bordered by a wide band of blue on which are twenty-five (25) white stars.

(B) Across the diamond shall be the word “ARKANSAS” and four (4) blue stars, with one (1) star above and three (3) stars below the word “ARKANSAS”.

(C) The star above the word “ARKANSAS” shall be below the upper corner of the diamond.

(D) The three (3) stars below the word “ARKANSAS” shall be placed so that one (1) star shall be above the lower corner of the diamond and two (2) stars shall be placed symmetrically, parallel above and to the right and left of the star in the lower corner of the diamond.

(2) The colors used for the official state flag shall be the same as those used on the United States flag, specifically to include:

- (A) Old Glory Red or its equivalent; and
- (B) Old Glory Blue or its equivalent.

(b) The three (3) stars so placed are designed to represent the three (3) nations, France, Spain, and the United States, which have successively exercised dominion over Arkansas. These stars also indicate that

Arkansas was the third state carved out of the Louisiana Purchase. Of these three (3) stars, the twin stars parallel with each other signify that Arkansas and Michigan are twin states, having been admitted to the Union together on June 15, 1836. The twenty-five (25) white stars on the band of blue show that Arkansas was the twenty-fifth state admitted to the Union. The blue star above the word "ARKANSAS" is to commemorate the Confederate States of America. The diamond signifies that this state is the only diamond-bearing state in the Union.

(c) An official state flag shall be made in the United States.

History. Acts 1987, No. 116, § 1; 2011, No. 1205, §§ 1, 2. **Amendments.** The 2011 amendment inserted (a)(2); and added (c).

1-4-104. Distribution of flags.

(a)(1) The Secretary of State shall obtain a sufficient quantity of flags of the United States and of the State of Arkansas in order that the flags that have been flown over the State Capitol Building may be made available to members of the House of Representatives and Senate and to the Governor for distribution to civic groups, schools, and organized youth groups in their respective areas.

(2) The flags described under this section and purchased by the Secretary of State shall be made in the United States.

(b) A sufficient quantity of flags shall be obtained to permit the Secretary of State to make available for distribution in the manner authorized in this section:

(1) Thirty (30) Arkansas flags and twenty (20) United States flags per calendar year to each member of the House of Representatives and the Senate;

(2) One hundred (100) Arkansas flags and one hundred (100) United States flags per calendar year to the office of the Governor;

(3) One hundred (100) Arkansas flags and one hundred (100) United States flags to the office of the Secretary of State;

(4) Thirty-five (35) Arkansas flags and thirty-five (35) United States flags to the office of the President Pro Tempore of the Senate;

(5) Thirty-five (35) Arkansas flags and thirty-five (35) United States flags to the office of the Speaker of the House of Representatives; and

(6) Twenty-five (25) Arkansas flags and twenty-five (25) United States flags per calendar year to:

- (A) The Lieutenant Governor;
- (B) The Treasurer of State;
- (C) The Auditor of State; and
- (D) The Commissioner of State Lands.

(c) The provisions of this section shall be in lieu of any other law of this state which provides for the Secretary of State to furnish copies of flags for distribution to civic groups, schools, and organized youth groups.

History. Acts 1985, No. 414, §§ 1, 2; A.S.A. 1947, §§ 5-120, 5-121; Acts 1989 (1st Ex. Sess.), No. 123, § 14; 2003, No. 300, § 1; 2011, No. 1205, § 3; 2013, No. 955, § 1.

Amendments. The 2011 amendment inserted (a)(2); and substituted “shall” for “is authorized and directed to” in (a)(1).

The 2013 amendment, in (b)(1), substituted “Thirty (30)” for “Fifteen (15)” and “twenty (20)” for “ten (10)”; rewrote (b)(2); inserted present (b)(3) through (b)(5); redesignated former (b)(3) as present (b)(6); and rewrote present (b)(6).

1-4-126. State butterfly.

(a) The Diana fritillary butterfly is designated the official butterfly of the State of Arkansas.

(b)(1) This section does not require a state agency or office to republish a publication or brochure in order to list or display the state butterfly.

(2) A state agency or office may include the information concerning the state butterfly in future publications or brochures or in a scheduled update to a publication or brochure.

(c) This section does not grant a protected status to the Diana fritillary butterfly.

History. Acts 2007, No. 156, § 1; 2009, No. 249, § 1.

inserted (b) and (c), and redesignated the remaining text accordingly.

Amendments. The 2009 amendment

1-4-127. State grain.

(a) Rice is designated the official grain of the State of Arkansas.

(b)(1) This section does not require a state agency or office to republish a publication or brochure in order to list or display the state grain.

(2) A state agency or office may include the information concerning the state grain in future publications or brochures or in a scheduled update to a publication or brochure.

History. Acts 2007, No. 513, § 1; 2009, No. 249, § 2.

inserted (b) and redesignated the remaining text accordingly.

Amendments. The 2009 amendment

1-4-128. Lowering of state flags when a member of the armed services is killed in action.

(a) As used in this section, “public building” means a structure occupied by an agency of the State of Arkansas or its political subdivisions.

(b) The State of Arkansas may honor and pay tribute to a member of the armed services who is killed in action by lowering a state flag located on a public building to half-staff any time after learning of the death of a member of the armed services for a period not to exceed three (3) days.

(c) This section applies to a member of the armed services who was or has been a resident of the State of Arkansas.

History. Acts 2009, No. 30, § 1; 2011, No. 1182, § 1.

Amendments. The 2011 amendment substituted “when a member of the armed services is” for “upon death of a soldier” in the section heading; in (b), substituted “may honor” for “shall honor,” substituted “a state flag located on a public building” for “all state flags located on public build-

ings,” substituted “any time after learning of the death of a member of the armed services” for “from the time notice of the death of a member of the armed services is received,” and inserted “not to exceed”; and in (c), deleted “only” following “This section,” inserted “or has been,” and deleted “at the time of his or her death” at the end.

1-4-129. State grape.

(a) The Cynthiana grape, or *Vitis Aestivalis*, is designated the official grape of the State of Arkansas.

(b)(1) This section does not require a state agency or office to republish a publication or brochure in order to list or display the state grape.

(2) A state agency or office may include the information concerning the state grape in future publications or brochures or in a scheduled update to a publication or brochure.

(c) This section does not grant a protected status to the Cynthiana grape.

History. Acts 2009, No. 547, § 1.

1-4-130. State nut.

(a) The pecan is designated the official nut of the State of Arkansas.

(b) This section does not require a state agency or office to republish any publication or brochure in order to list or display the state nut. A state agency or office may include the information concerning the state nut in future publications or brochures or in any scheduled update to a publication or brochure.

(c) This section does not grant a protected status to the pecan.

History. Acts 2009, No. 638, § 1.

1-4-131. Artist laureate.

(a) The Governor may confer by proclamation the honorary title of “Artist Laureate of the State of Arkansas” in recognition of outstanding accomplishments and contributions in art by a person who is a resident of the State of Arkansas.

(b)(1) The person designated or appointed by the Governor as Artist Laureate of the State of Arkansas shall be a visual, performing, or literary artist who was nominated by one (1) or more Arkansans.

(2) The Governor may consult with educational institutions, state agencies, and members of the public to facilitate the selection process.

(c) The Artist Laureate of the State of Arkansas shall serve a term of four (4) years or until a successor has been appointed for this honorary designation.

History. Acts 2013, No. 167, § 1.

1-4-132. Poultry Capital of the World.

The City of Springdale, Arkansas, shall hereafter be known and may be referred to as the "Poultry Capital of the World".

History. Acts 2013, No. 767, § 1.

CHAPTER 5

HOLIDAYS AND OBSERVANCES

SECTION.

1-5-102. State offices to be closed on holidays — Exceptions.

1-5-102. State offices to be closed on holidays — Exceptions.

(a) All state offices shall be closed on all days declared to be legal holidays under the laws of this state, and all persons employed thereby shall not be required to work on legal holidays. However, this section shall not apply to those state government offices wherever located and to those employees that are essential to the preservation and protection of the public peace, health, and safety, nor to the offices of the various constitutional officers who may use their own discretion in the matter of closing their offices on legal holidays.

(b) It is the specific intent of this section that all state offices be closed on all legal holidays even though one (1) or more legal holidays shall fall during a regular session, a fiscal session, or a special session of the General Assembly, provided that, with respect to state offices located in Pulaski County, those offices shall not be closed for any legal holiday during a regular session, a fiscal session, or a special session of the General Assembly unless they are permitted to close by resolution of the General Assembly, but those offices shall maintain only a minimum number of employees necessary to carry on the business of the offices.

(c) Any state employee who is required to work on a legal holiday, for any reason, shall be entitled to equivalent time off at a later date.

(d) Notwithstanding the provisions of subsection (a) of this section, state-supported institutions of higher learning in this state may require the employees of the institutions to work on any of the holidays established in § 1-5-101, but if the employees are required to work on any day declared as a legal holiday, the employees shall be entitled to equivalent time off on another date.

History. Acts 1971, No. 370, §§ 2, 3;

1975, No. 976, §§ 2, 4; A.S.A. 1947, §§ 69-112, 69-113; Acts 2009, No. 962, § 2.

Amendments. The 2009 amendment, in (b), substituted “regular session, a fiscal

session, or a” for “general or” and “a regular session, a fiscal session, or a” for “any general session or.”

1-5-107. Confederate Flag Day.

RESEARCH REFERENCES

ALR. Propriety of Prohibition of Display or Wearing of Confederate Flag. 66 A.L.R.6th 493.

TITLE 2

AGRICULTURE

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS.
3. ARKANSAS AGRICULTURAL FOREIGN INVESTMENT.
8. TAX CREDITS FOR BIOTECHNOLOGY AND ADVANCED BIOFUELS [REPEALED.]
10. ARKANSAS MILK STABILIZATION BOARD.
11. AGRITOURISM ACT.

SUBTITLE 2. AGRONOMY

CHAPTER.

15. GENERAL PROVISIONS.
16. PLANT DISEASE AND PEST CONTROL.
19. FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENT.

SUBTITLE 3. LIVESTOCK

CHAPTER.

32. GENERAL PROVISIONS.
35. MARKETING, SALE, AND TRANSPORTATION.
36. LIVESTOCK SHOWS AND FAIRS.
38. LIVESTOCK RUNNING AT LARGE OR STRAYING.
39. FENCES.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS YOUNG AND BEGINNING FARMER ADVISORY BOARD.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-1-102. Sustainable agriculture.

2-1-102. Sustainable agriculture.

- (a) As used in this section, “sustainable” includes without limitation:
- (1) Science-based practices supported by research; and
 - (2) The use of technology that is demonstrated to lead to broad, outcomes-based performance improvements that:
- (A) Meet the needs of the present; and

(B) Improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.

(b) Sustainable agriculture may use continuous improvement principles with goals that include without limitation:

- (1) Increasing agricultural productivity;
- (2) Improving human health through access to safe, nutritious, and affordable food; and

(3) Enhancing agricultural and surrounding environments, including without limitation water, soil, and air quality, biodiversity, and habitat preservation.

(c)(1) The Arkansas Agriculture Department and the State Plant Board shall interpret any administrative rule or regulation promulgated by a state or federal agency that establishes standards for harvesting or producing agricultural crops in accordance with the definition and guidelines provided in this section.

(2) This section does not apply to silviculture and any rules or regulations regarding silviculture.

History. Acts 2011, No. 1196, § 1.

SUBCHAPTER 2 — ARKANSAS YOUNG AND BEGINNING FARMER ADVISORY BOARD

SECTION.

2-1-201. Established.

2-1-201. Established.

(a) The Arkansas Young and Beginning Farmer Advisory Board is established to advise agriculture-related agencies of state government with respect to the impact the agencies have on the future of agriculture and the agricultural way of life in Arkansas and to help young Arkansas farmers appreciate their heritage and agricultural work in relation to the history and the economy of Arkansas.

(b) The offices of the board shall be located within the Arkansas Agriculture Department in Little Rock, and the department shall provide administrative staff for the board and its committees.

History. Acts 2003, No. 1760, § 1; 2009, No. 543, § 1. **Department**" for "Arkansas Economic Development Commission" and "department" for "commission."

Amendments. The 2009 amendment, in (b), substituted "Arkansas Agriculture

CHAPTER 3

ARKANSAS AGRICULTURAL FOREIGN INVESTMENT

SECTION.

2-3-110. Agricultural land used for non-

farming purposes and mineral leases.

2-3-110. Agricultural land used for nonfarming purposes and mineral leases.

(a) The restrictions set forth in this chapter do not apply to agricultural land acquired by a foreign party for immediate or potential use for nonfarming purposes.

(b) A foreign party who acquires agricultural land for nonfarming purposes shall not be required to make a filing or report under this chapter.

(c)(1) A foreign party who acquires agricultural land under subsection (a) of this section and later uses the agricultural land for farming purposes shall register as required in this chapter within sixty (60) days of the change in use.

(2) Failure to register ownership for the use of agricultural land for farming purposes under subdivision (c)(1) of this section shall be subject to actions as provided in §§ 2-3-106 and 2-3-107.

(d) The restrictions set forth in this chapter do not apply and no reporting requirement attaches to leases or other conveyances granting the right to explore for and produce the oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land, and oil, gas, coal, lignite, brine, and other mineral or royalty interests regardless of type or duration, easements, or tracts of land reasonably necessary for the extraction of oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land.

History. Acts 1979, No. 1096, § 10; A.S.A. 1947, § 77-2210; Acts 2009, No. 643, §§ 1, 2.

A.C.R.C. Notes. Acts 2009, No. 643, § 2, provided: "This act applies retroactively to April 19, 1979."

Amendments. The 2009 amendment, in (b), deleted (b)(2), which read: "The filings shall be made within sixty (60) days of the date of transfer of title to the

land," redesignated the remaining text, and substituted "not be required to make a filing or report under this chapter" for "file with the Secretary of State a declaration of intent as to the intended use of the land, the foreign party's identity, and a legal description of the land acquired"; rewrote (c); and made minor stylistic changes.

CHAPTER 7

FARM MEDIATION

SUBCHAPTER 1 — GENERAL PROVISIONS

2-7-102. Definitions.

CASE NOTES

Application.

Trial court did not err in refusing to apply the Arkansas Farm Mediation Act,

§ 2-7-101 et seq., to an action relating to a writ of execution where a debtor failed to show that this proceeding was in connec-

tion with a secured indebtedness. Moreover, he did not make it clear that the loans were secured by real estate, crops, livestock, farm machinery, or other agri-

cultural supplies, as required in the definition of a "farmer." Looney v. Raby, 100 Ark. App. 326, 268 S.W.3d 345 (2007).

SUBCHAPTER 3 — MEDIATION

2-7-302. Release prior to proceedings required — Exceptions.

CASE NOTES

Application.

Trial court did not err in refusing to apply the Arkansas Farm Mediation Act, § 2-7-101 et seq., to an action relating to a writ of execution where a debtor failed to show that this proceeding was in connection with a secured indebtedness. More-

over, he did not make it clear that the loans were secured by real estate, crops, livestock, farm machinery, or other agricultural supplies, as required in the definition of a "farmer." Looney v. Raby, 100 Ark. App. 326, 268 S.W.3d 345 (2007).

CHAPTER 8

TAX CREDITS FOR BIOTECHNOLOGY AND ADVANCED BIOFUELS [REPEALED.]

SECTION.

2-8-101 — 2-8-109. [Repealed.]

2-8-101 — 2-8-109. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 716, § 1. The subchapter was derived from the following sources:

2-8-101. Acts 1997, No. 1117, § 1; 1999, No. 1367, § 1.

2-8-102. Acts 1997, No. 1117, § 2; 1999, No. 1367, § 2; 2001, No. 900, § 1.

2-8-103. Acts 1997, No. 1117, § 3; 2001, No. 900, § 2.

2-8-104. Acts 1997, No. 1117, § 4.
 2-8-105. Acts 1997, No. 1117, § 5.
 2-8-106. Acts 1997, No. 1117, § 6; 1999, No. 1367, § 4; 2001, No. 900, § 3.
 2-8-107. Acts 1997, No. 1117, § 7.
 2-8-108. Acts 1997, No. 1117, § 8; 1999, No. 1367, § 5.
 2-8-109. Acts 1999, No. 1367, § 3.

CHAPTER 10

ARKANSAS MILK STABILIZATION BOARD

SUBCHAPTER.

2. DAIRY STABILIZATION GRANT ACT.

SUBCHAPTER 2 — DAIRY STABILIZATION GRANT ACT

SECTION.

2-10-201. Findings — Intent.

2-10-202. Definition.

2-10-203. Dairy Stabilization Grant.

SECTION.

2-10-204. Milk production and quality incentives.

2-10-205. Rules.

2-10-201. Findings — Intent.

(a) The General Assembly finds that:

(1) The State of Arkansas is at risk of losing its dairy industry if immediate legislative action is not taken to reduce the sharp decline in the number of its dairy farms; and

(2) The loss of the dairy industry in Arkansas will result not only in the demise of dairy farming but also in significantly higher milk cost to Arkansas's citizens, including its children, and a loss of jobs in the processing of milk products.

(b) The intent of this subchapter is to:

(1) Prevent harm to Arkansas's consumers and dairy industry;

(2) Establish the Dairy Stabilization Program, which will safeguard the interests of dairy producers in this state;

(3) Ensure that dairy producers receive fair market breakeven prices;

(4) Provide consumers a continuous and affordable supply of Arkansas-produced fluid milk and other dairy products;

(5) Reverse the loss of dairy farms in the state;

(6) Significantly curtail the increase in milk prices to the consumer by helping to ensure in-state production; and

(7) Maintain and potentially increase jobs in the processing of milk products by stabilizing prices to dairy farmers.

History. Acts 2009, No. 968, § 1.

2-10-202. Definition.

As used in this subchapter, "milk producer" means a person or entity that operates a bovine dairy farm that possesses a valid permit signed by the administrator of the Arkansas Grade "A" Milk Program.

History. Acts 2009, No. 968, § 1.

2-10-203. Dairy Stabilization Grant.

(a) The Dairy Stabilization Grant is created.

(b)(1)(A) If funds are available, the Secretary of the Arkansas Agriculture Department shall calculate monthly the difference between the average monthly blend price of milk received by Arkansas milk producers as estimated by the secretary and seventy percent (70%) of the average monthly cost of producing milk in Missouri and Tennessee as estimated by the United States Department of Agriculture.

(B) If the average monthly blend price of milk received by Arkansas milk producers is lower than seventy percent (70%) of the calculated average cost of producing milk in Missouri and Tennessee, the milk producer is eligible for a monthly Dairy Stabilization Grant in the amount of the difference, which will be paid quarterly. The secretary shall pay the milk producer by the fifteenth day of the month following the end of the quarter.

(2) The secretary shall not pay a milk producer more than five dollars (\$5.00) per hundred weight of milk per month under subdivision (b)(1) of this section.

(c) Grants received by a milk producer under this section shall not exceed an annual average of two dollars (\$2.00) per hundred weight of milk.

(d) Grants authorized by the secretary shall be made to the milk producer from moneys appropriated by the General Assembly for that purpose.

History. Acts 2009, No. 968, § 1.

2-10-204. Milk production and quality incentives.

(a) If funds are available, as an incentive to continue milk production and to improve milk quality, the Secretary of the Arkansas Agriculture Department may pay a milk producer the following incentive payments:

(1)(A) Fifty cents (50¢) per hundred weight of milk for each hundred weight of milk produced above the milk producer's average annual milk production.

(B) A milk producer's average annual milk production specified under subdivision (a)(1)(A) of this section shall be calculated over the two (2) years preceding the year of disbursement; and

(2) Fifty cents (50¢) per hundred weight of milk if the milk contains a somatic cell count of less than four hundred thousand (400,000).

(b) A milk producer that begins milk production after July 31, 2009 qualifies for payments under subsection (a) of this section after the completion of one (1) continuous year of milk production in Arkansas.

(c) Annual payments to a milk producer under this section shall not exceed fifty thousand dollars (\$50,000).

(d) If funds are available, the secretary shall pay the annual production and quality incentive payments to the eligible milk producers by January 15 of the following year.

History. Acts 2009, No. 968, § 1; 2011, No. 776, § 1.

Amendments. The 2011 amendment substituted "a somatic cell count of less

than four hundred thousand (400,000)" for "less than four-hundred-thousand somatic cell count" in (a)(2).

2-10-205. Rules.

The Director of the Department of Finance and Administration and the Secretary of the Arkansas Agriculture Department shall adopt rules to implement this subchapter.

History. Acts 2009, No. 968, § 1.

CHAPTER 11

AGRITOURISM ACT

SECTION.

- 2-11-101. Title.
2-11-102. Legislative intent — Construction — Purpose.
2-11-103. Definitions.
2-11-104. Assumption of risk by participant.

SECTION.

- 2-11-105. Liability of agritourism activity operator.
2-11-106. Limitation of liability.
2-11-107. Warning required.

2-11-101. Title.

This chapter shall be known and may be cited as the “Agritourism Act”.

History. Acts 2011, No. 1024, § 1.

2-11-102. Legislative intent — Construction — Purpose.

(a) It is the intent of this chapter to:

(1) Promote rural tourism and rural economic development by encouraging owners or operators of farms, ranches, and other rural land or attractions, including historic, cultural, and natural attractions, to invite members of the public to view, observe, and participate in the operations and attractions for educational, entertainment, or recreational purposes; and

(2) Encourage agritourism activities by limiting civil liability of those engaged in agritourism or providing the activities of agritourism.

(b) This chapter shall be liberally construed to carry out the purposes described in subsection (a) of this section.

History. Acts 2011, No. 1024, § 1.

2-11-103. Definitions.

As used in this chapter:

(1) “Agribusiness operation” means an agricultural, horticultural, viticultural, forestry, dairy, livestock, poultry, bee, or any other farm, ranch, plantation, or range business operation;

(2)(A) “Agritourism activity” means an interactive or passive activity carried out with or without payment to an agritourism activity operator on a farm, ranch, or agribusiness operation related to agriculture, food production, historic traditions, or nature-watching conducted by an agritourism activity operator for the education, entertainment, or recreation of participants.

(B) “Agritourism activity” includes without limitation:

- (i) A farming or ranching activity;
- (ii) The viewing of historic, cultural, or natural attractions;
- (iii) A harvest-your-own activity;
- (iv) Nature-watching; and

- (v) An activity involving an animal exhibition at an agricultural fair.
- (C) "Agritourism activity" does not include:
- (i) A road side fruit and vegetable stand; or
 - (ii) An operation exclusively devoted to the sale of merchandise or food at retail;
- (3) "Agritourism activity operator" means an individual or entity that provides the facilities and equipment necessary to participate in an agritourism activity;
- (4) "Inherent risk" means dangers or conditions that are an integral part of an agritourism activity, including without limitation:
- (A) The propensity of a wild or domestic animal to behave in ways that may result in injury, harm, or death to persons on or around the wild or domestic animal;
 - (B) Hazards such as surface and subsurface conditions;
 - (C) Natural conditions of land, vegetation, and waters;
 - (D) Ordinary dangers of structures or equipment used in farming or ranching operations; and
 - (E) The potential of a participant to act in a negligent way that may contribute to injury to the participant or others, whether failing to follow safety procedures or failing to act with reasonable caution while engaging in the agritourism activity; and
- (5) "Participant" is defined as a person, other than the agritourism activity operator, who engages in an agritourism activity.

History. Acts 2011, No. 1024, § 1.

2-11-104. Assumption of risk by participant.

Except as provided in § 2-11-105, a participant assumes the inherent risk of an agritourism activity by engaging in the agritourism activity.

History. Acts 2011, No. 1024, § 1.

2-11-105. Liability of agritourism activity operator.

This chapter shall not prevent or limit the liability of an agritourism activity operator if the agritourism activity operator or an agent of the agritourism activity operator:

- (1) Commits an act or omission of gross negligence concerning the safety of a participant that proximately causes injury, damage, or death to the participant;
- (2) Has actual knowledge of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in the activity that proximately causes injury, damage, or death to the participant and does not make the danger known to the participant that proximately causes injury, damage, or death to the participant;
- (3) Intentionally injures a participant; or

(4) Commits other acts, errors, or omissions that constitute willful or wanton misconduct, gross negligence, or criminal conduct that proximately causes injury, damage, or death.

History. Acts 2011, No. 1024, § 1.

2-11-106. Limitation of liability.

(a) An agritourism activity operator or participant is not liable for damages arising from the personal injury or death of a participant if:

- (1) The injury or death results from an inherent risk; and
- (2) The warning contained in § 2-11-107 is posted.

(b) The limitation of liability provided by this section is in addition to any other limitation of liability provided by law.

History. Acts 2011, No. 1024, § 1; substituted “of” for “on” in the introductory language.

Amendments. The 2013 amendment

2-11-107. Warning required.

(a) At each agritourism activity, the agritourism activity operator shall post and maintain signage in a clearly visible location at or near the main entrance to the agritourism activity and in black letters at least one inch (1") in height containing the following warning:

“WARNING — Under Arkansas law, an agritourism activity operator is not liable for the injury or death of a participant in an agritourism activity resulting from the inherent risk of agritourism activities. Inherent risks include without limitation the risk of animals, weather, land conditions, and the potential for you as a participant to act in a negligent way that may contribute to your own injury or death. You are assuming the risk of participating in this agritourism activity.”

(b) The agritourism activity operator shall include, in clearly visible print, the warning contained in subsection (a) of this section in a written contract between the agritourism activity operator and each participant.

(c) At each agritourism activity, the agritourism operator shall post and maintain signage of a specific or known hazard in the particular area on or surrounding the agritourism activity.

History. Acts 2011, No. 1024, § 1.

SUBTITLE 2. AGRONOMY

CHAPTER 15

GENERAL PROVISIONS

SUBCHAPTER.

2. ARKANSAS RICE CERTIFICATION ACT.

SUBCHAPTER 2 — ARKANSAS RICE CERTIFICATION ACT**SECTION.**

- 2-15-201. Title.
2-15-202. Definitions.
2-15-203. Prohibition of rice with characteristics of commercial impact.
2-15-204. Administration — Duties of the State Plant Board.
-

SECTION.

- 2-15-205. Scientific Review Committee.
2-15-206. Violations — Notice.
2-15-207. Exemptions.
2-15-208. Penalties.

Acts 2009, No. 275, § 2: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Rice Certification Act is due to expire on July 1, 2009; that the rice industry is an essential component of the economy of this state; and that the continuation of the Arkansas Rice Certification Act is necessary for the protection of the rice crop in the State of Arkansas. Therefore, an emer-

gency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

2-15-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Rice Certification Act".

History. Acts 2005, No. 1238, § 1.

A.C.R.C. Notes. Acts 2009, No. 275, § 1, provided: "Acts 2005, No. 1238 § 2,

which states 'This act shall expire on July 1, 2009', is hereby repealed."

2-15-202. Definitions.

As used in this subchapter:

- (1) "Characteristics of commercial impact" means characteristics that may adversely affect the marketability of rice in the event of commingling with any other rice and includes, but is not limited to, those characteristics:
- (A) That cannot be identified without the aid of specialized equipment or testing;
 - (B) That create a significant economic impact in their removal from commingled rice; and
 - (C) Whose removal from commingled rice is not feasible; and
- (2) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in Arkansas.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed."

A.C.R.C. Notes. Acts 2009, No. 275, § 1, provided: "Acts 2005, No. 1238 § 2,

2-15-203. Prohibition of rice with characteristics of commercial impact.

No person may introduce, sell, plant, produce, harvest, transport, store, process, or otherwise handle rice identified as having characteristics of commercial impact, except in compliance with this subchapter and the rules adopted by the State Plant Board.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed."

A.C.R.C. Notes. Acts 2009, No. 275, § 1, provided: "Acts 2005, No. 1238 § 2,

2-15-204. Administration — Duties of the State Plant Board.

(a) The State Plant Board shall:

(1) Administer and enforce this subchapter;

(2) Promulgate rules to implement the purposes and requirements of this subchapter, including rules that will establish a penalty matrix for violations of this subchapter and the rules promulgated under this subchapter; and

(3) Receive and investigate complaints regarding alleged violations of this subchapter and rules promulgated by the board.

(b) The board may:

(1) Prohibit or place restrictions on the selling, planting, producing, harvesting, transporting, storing, processing, or other handling of rice identified as having characteristics of commercial impact; and

(2) Charge a reasonable fee to cover the cost of inspections and other activities permitted under this subchapter.

(c) All moneys received by the board under this subchapter and the rules adopted by the board shall be deposited in the Plant Board Fund to be used for carrying out the provisions of this subchapter.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed."

A.C.R.C. Notes. Acts 2009, No. 275, § 1, provided: "Acts 2005, No. 1238 § 2,

2-15-205. Scientific Review Committee.

(a) The State Plant Board may appoint a Scientific Review Committee.

(b) The committee shall review and make recommendations to the board concerning all matters contained in this subchapter, including:

(1) Identifying rice that has characteristics of commercial impact;

(2) Reviewing rice identified as having characteristics of commercial impact upon receipt of a petition from the purveyor of the rice;

(3) Recommending rules establishing terms and conditions for planting, producing, harvesting, selling, transporting, processing, storing, or

otherwise handling rice identified pursuant to subdivision (b)(1) of this section; and

(4) Reviewing the efficacy of terms, conditions, and identity preservation programs imposed on the planting, producing, harvesting, transporting, drying, storing, or other handling of rice identified under subdivision (b)(1) of this section, using the most current industry standards and generally accepted scientific principles.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed.'

A.C.R.C. Notes. Acts 2009, No. 275,

§ 1, provided: "Acts 2005, No. 1238 § 2,

2-15-206. Violations — Notice.

(a) Upon receiving a complaint alleging that a person has violated this subchapter or a rule of the State Plant Board, the board shall provide notice to the person and an opportunity for the person to respond to the complaint.

(b) If the board determines that the complaint warrants further action, the board shall notify the person in writing of the board's decision.

(c) The board may seek injunctive relief, commence a civil action against the person, or seek other remedies provided by law.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed.'

A.C.R.C. Notes. Acts 2009, No. 275,

§ 1, provided: "Acts 2005, No. 1238 § 2,

2-15-207. Exemptions.

The provisions of this subchapter shall not apply to research conducted by a federal, state, or private entity, including an institution of higher education, which conforms to and is in compliance with all state and federal laws and rules for laboratory management practices.

History. Acts 2005, No. 1238, § 1.

which states 'This act shall expire on July 1, 2009', is hereby repealed.'

A.C.R.C. Notes. Acts 2009, No. 275,

§ 1, provided: "Acts 2005, No. 1238 § 2,

2-15-208. Penalties.

(a)(1) The State Plant Board may impose a civil penalty for violation of § 2-15-203.

(2) The penalty shall not exceed one hundred thousand dollars (\$100,000).

(3) Each day of a continuing violation of § 2-15-203 is a separate violation.

(b) The board may bring an action in any court of competent jurisdiction to collect a penalty under this section and may recover all attorney's fees, costs, and expenses incurred by the board in bringing the action.

History. Acts 2005, No. 1238, § 1. which states 'This act shall expire on July 1, 2009', is hereby repealed.
A.C.R.C. Notes. Acts 2009, No. 275, § 1, provided: "Acts 2005, No. 1238 § 2,

CHAPTER 16

PLANT DISEASE AND PEST CONTROL

SUBCHAPTER.

- 2. PLANT ACT OF 1917.
- 5. JOHNSON GRASS CONTROL AND ERADICATION.
- 9. PEST CONTROL COMPACT.

SUBCHAPTER 2 — PLANT ACT OF 1917

SECTION.

- 2-16-203. Penalty.
- 2-16-206. State Plant Board.

2-16-203. Penalty.

(a) Any person who shall violate any provision or requirement of this subchapter or the rules and regulations made or of any notice given pursuant to this subchapter or who shall forge, counterfeit, deface, destroy, or wrongfully use any certificate provided for in this subchapter or in the rules and regulations made pursuant to this subchapter shall be guilty of a violation, and upon conviction he or she shall be punished by a fine of not more than one hundred dollars (\$100).

(b)(1)(A) In a lawful proceeding respecting licensing, as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in addition to or in lieu of any other lawful disciplinary action, the State Plant Board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of any statute, rule, or order enforceable by the board.

(B) In no case shall a single application or drift incident by a pesticide applicator be considered multiple violations based on the number of complaints.

(C) In no case shall the failure to meet minimum treating standards, except those that require a termiticide application, be considered a violation and subject to a civil penalty.

(2)(A) The board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under this section for violation of each statute, rule, or order over which it has regulatory control.

(B) The board may promulgate any other regulation necessary to carry out the intent of this section.

(3) In the event of nonpayment of any civil penalty lawfully assessed pursuant to subdivision (b)(1) of this section, the civil penalty shall be recoverable in the name of the state by the Attorney General in Pulaski County Circuit Court or in the circuit court of the county in which the violation occurred.

(4)(A) All sums paid or recovered under this section shall be deposited into the State Treasury.

(B)(i) Sums collected under special revenue programs shall be deposited in the Plant Board Fund.

(ii) Sums collected under general services programs shall be deposited into the Miscellaneous Agencies Fund Account.

(5) All rules and regulations promulgated pursuant to this section shall be reviewed by the House Committee on Agriculture, Forestry, and Economic Development and the Interim Committee on Agriculture, Forestry, and Economic Development or subcommittees of the House Committee on Agriculture, Forestry, and Economic Development and the Interim Committee on Agriculture, Forestry, and Economic Development.

History. Acts 1917, No. 414, § 15; C. & M. Dig., § 8038; Pope's Dig., § 12346; A.S.A. 1947, § 77-114; Acts 1995, No. 141, § 1; 1995, No. 167, § 1; 1997, No. 317, § 1; 2003, No. 1473, § 1; 2005, No. 1994, § 7.

Publisher's Notes. This section is being set out to correct a reference to a fund account in (b)(4)(B)(ii).

2-16-206. State Plant Board.

(a) There is created and established a State Plant Board, composed of eighteen (18) members, as follows:

(1) The head of the Department of Entomology, University of Arkansas College of Agriculture;

(2) The head of the Department of Plant Pathology, University of Arkansas College of Agriculture;

(3) A practical cotton grower, actively engaged in the business, to be appointed by the Governor;

(4) One (1) member to represent the Arkansas fertilizer and cotton oil mills, actively engaged in the business, to be appointed by the Governor;

(5) A practical rice grower, actively engaged in the business, to be appointed by the Governor;

(6) A practical horticulturist, actively engaged in the business, to be elected by the Arkansas State Horticultural Society;

(7) A nurseryman, actively engaged in the business, to be elected by the Arkansas Green Industry Association;

(8) A practical seed grower, actively engaged in the business, to be elected by the Arkansas Seed Growers Association;

(9) A pest control operator, actively engaged in the business, to be elected by the Arkansas Pest Control Association, Inc.;

(10) A seed dealer, actively engaged in the business, to be elected by the Arkansas Seed Dealers Association;

(11) A feed manufacturer, actively engaged in the business, to be elected by the Arkansas Feed Manufacturers Association;

(12) A pesticide manufacturer, actively engaged in the business, to be elected by the Arkansas Agricultural Pesticide Association;

(13) One (1) member to represent the Arkansas Agricultural Aviation Association, to be elected by the Arkansas Agricultural Aviation Association;

(14) One (1) member to represent the Arkansas Forestry Association, to be elected by the Arkansas Forestry Association;

(15) Two (2) farmers actively and principally engaged in farming in this state, appointed by the Governor;

(16) One (1) representative of the livestock industry, actively engaged in the business, to be appointed by the Governor; and

(17) One (1) representative of the forage industry, actively engaged in the business, to be appointed by the Governor.

(b) Board members shall serve a term of two (2) years or until such time as a successor has been elected or appointed as herein provided. A majority of the members of the board shall constitute a quorum for all purposes.

(c) The chair, vice chair, and secretary-treasurer shall be elected by the members of the board. The board shall designate some official or employee of the board to serve as disbursing officer of the board.

(d) Meetings of the board shall be called by the chair or by four (4) members of the board.

(e) The members shall serve without compensation but may receive expense reimbursements in accordance with § 25-16-901 et seq. and shall be authorized to provide a suitable office where the meetings of the board may be held and its records kept.

(f) If necessary to provide suitable space for its offices, laboratories, and other needs, the board may buy property, build buildings, or lease property for a period covering not more than fifteen (15) years from the date of lease.

History. Acts 1917, No. 414, § 3; C. & M. Dig., § 8026; Acts 1929, No. 197, § 1; 1931, No. 73, § 2; 1935, No. 97, § 1; Pope's Dig., § 12335; Acts 1953, No. 408, § 1; 1955, No. 239, § 1; 1961, No. 144, § 1; 1967, No. 77, § 1; 1971, No. 276, § 1; 1975, No. 409, § 1; A.S.A. 1947, § 77-103;

Acts 1997, No. 250, § 2; 2013, No. 591, §§ 1, 2.

Amendments. The 2013 amendment substituted "eighteen (18)" for "sixteen (16)" in the introductory language of (a); and added (a)(16) and (a)(17).

SUBCHAPTER 5 — JOHNSON GRASS CONTROL AND ERADICATION

SECTION.

2-16-504. Petition to establish district.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of

elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time

during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

2-16-504. Petition to establish district.

(a)(1) Upon the petition of fifty (50) landowners filed with the county court or courts in which a proposed district lies, the county court or courts shall declare that a threat to the agricultural economy of the proposed district exists by reason of the uncontrolled growth of Johnson grass.

(2) The county court or courts shall cause the question of whether the district shall be established and this subchapter shall be enforced in the district to be submitted to the landowners of the proposed district.

(b)(1) Immediately upon the submission of the petition to the county court or courts, the court or courts shall issue a proclamation calling the election in accordance with § 7-11-201 et seq. and notify the county board or boards of election commissioners in writing. The election shall be held on a date in accordance with § 7-11-201 et seq. but in no event more than ninety (90) days following publication of the proclamation.

(2) This special election shall be held for the purpose of submitting to the landowners of the proposed district the question of whether the district shall be established and the provisions of this subchapter shall be enforced in the district.

History. Acts 1967, No. 186, § 3; 1975, No. 287, § 3; A.S.A. 1947, § 77-1703; Acts 2005, No. 2145, § 1; 2007, No. 1049, § 1; 2009, No. 1480, § 1.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" twice in (b)(1).

SUBCHAPTER 9 — PEST CONTROL COMPACT

SECTION.

- 2-16-901. Pest Control Compact.
- 2-16-902. Cooperation with insurance fund.
- 2-16-903. Filing of bylaws and amendments.
- 2-16-904. Compact administrator.

SECTION.

- 2-16-905. Request or application for assistance.
- 2-16-906. Notices.
- 2-16-907. Credit for expenditures.
- 2-16-908. Definition.
- 2-16-909. Effective date.

2-16-901. Pest Control Compact.

The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V (e) of this Compact.

Article III

The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such

personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the Compact in his state; and

2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize

expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this Compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the

purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefore shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the

meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this Compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all

other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History. Acts 2009, No. 401, § 1; 2013, No. 1122, § 2. inserted "The party states find that" before (a).

Amendments. The 2013 amendment

2-16-902. Cooperation with insurance fund.

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

History. Acts 2009, No. 401, § 1.

2-16-903. Filing of bylaws and amendments.

Pursuant to Article IV (h) of the Compact, copies of bylaws and amendments thereto shall be filed with the Director of the State Plant Board.

History. Acts 2009, No. 401, § 1.

2-16-904. Compact administrator.

The Compact administrator for this state shall be the Director of the State Plant Board.

History. Acts 2009, No. 401, § 1.

2-16-905. Request or application for assistance.

Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the Governor or the Director of the State Plant Board, whenever in his of

her judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

History. Acts 2009, No. 401, § 1.

2-16-906. Notices.

In addition to the state Compact administrator, notices pursuant to Article VI (d) should be sent to the Assistant Director of the State Plant Board and the person designated as the State Plant Regulatory Official.

History. Acts 2009, No. 401, § 1.

2-16-907. Credit for expenditures.

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his or her account, in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

History. Acts 2009, No. 401, § 1.

2-16-908. Definition.

As used in this Compact, with reference to this state, the term "executive head" shall mean the Governor.

History. Acts 2009, No. 401, § 1.

2-16-909. Effective date.

This law becomes effective September 1, 2009.

History. Acts 2009, No. 401, § 1.

CHAPTER 19

FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENT

SUBCHAPTER.

2. FERTILIZERS.
3. LIMING MATERIALS.

SUBCHAPTER 2 — FERTILIZERS

SECTION.

2-19-209. Monthly tonnage reports.

2-19-211. Use of penalties from fertilizer tonnage fees.

2-19-209. Monthly tonnage reports.

(a)(1)(A) All manufacturers and manipulators or agents representing them who have registered their brands in compliance with § 2-19-202 shall forward to the State Plant Board each month a report that shall reach its office on or before the twentieth day of the month, on the forms and in the number of copies to be prescribed by the State Plant Board.

(B) The report shall include a sworn statement of the total tonnage of all commercial fertilizers and fertilizer materials shipped or caused to be shipped for sale or consumption in this state, or which have been made, mixed, manufactured, or compounded in this state for sale or consumption in this state.

(2)(A)(i) The report shall be accompanied with the sum of two dollars and forty cents (\$2.40) per ton or fractional ton.

(ii) A fee of two dollars and forty cents (\$2.40) will accompany each monthly report of tonnage which amounts to less than one (1) ton.

(B) The State Plant Board shall issue receipt for the amount received and shall deposit the sums received as follows:

(i) Sixty-two cents (62¢) of the two dollars and forty cent (\$2.40) fee per ton or fractional ton inspected shall be deposited with the Treasurer of State as special revenues and shall be credited to the Plant Board Fund to be used for the maintenance, operation, support, and improvement of the board; and

(ii)(a) One dollar and seventy-eight cents (\$1.78) of the two dollar and forty cent (\$2.40) fee per ton or fractional ton inspected shall be remitted to the Board of Trustees of the University of Arkansas and shall be credited to a fund to be known as the "University of Arkansas, Division of Agriculture, Soil Testing and Research Fund" to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment station, branch experiment stations, or sub-branch experiment stations, as determined and designated by the Vice President for Agriculture of the University of Arkansas System.

(b)(1) The Board of Trustees of the University of Arkansas shall provide for the investment of any funds in the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund that are not needed for current operations of the soil testing laboratories and soil fertility service and research activities and shall credit the interest earned on that investment to the credit of the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund.

(2) The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the State Board of Finance.

(b)(1) The State Plant Board or its agents shall have the right, at any time, to inspect or audit the books of any manufacturer and manipulator or their agents to determine the correctness of the monthly reports required under this section.

(2) Refusal to allow this inspection or audit shall be deemed a violation of this subchapter, and the violator shall be subject to the penalties provided in this subchapter.

(3) For a late report or for failure to report the entire amount sold, the tonnage fee on the late reported or unreported amount shall be enhanced by ten percent (10%) if less than fifteen (15) days late, twenty percent (20%) if less than thirty-one (31) days late, and doubled if more than thirty (30) days late. Penalties shall be deposited in the Plant Board Fund; otherwise, registrations may be cancelled by the State Plant Board.

History. Acts 1951, No. 106, § 4; 1953, No. 301, § 1; 1957, No. 356, § 3; 1981, No. 398, § 2; A.S.A. 1947, § 77-707; Acts 1993, No. 783, § 1; 1999, No. 766, § 1; 2009, No. 326, § 1.

Amendments. The 2009 amendment, in (a), substituted “two dollars and forty cents (\$2.40)” for “one dollar and twenty cents (\$1.20)” in (a)(2)(A)(i) and (ii), substituted “Sixty-two cents (62¢) of the two dollars and forty cent (\$2.40)” for “Thirty-

one cents (32¢) of the one dollar and twenty cent (\$1.20)” in (a)(2)(B)(i), substituted “One dollar and seventy-eight cents (\$1.78) of the two dollar and forty cent (\$2.40)” for “Eighty-nine cents (89¢) of the one dollar and twenty cent (\$1.20)” in (a)(2)(A)(ii)(a), inserted “Division of Agriculture” in (a)(2)(A)(ii)(a) and twice in (a)(2)(A)(ii)(b)(1), and made related changes.

2-19-211. Use of penalties from fertilizer tonnage fees.

All penalties received by the State Plant Board for failure to pay or report fertilizer tonnage fees shall be remitted to the Board of Trustees of the University of Arkansas, to be credited to the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund in the same manner as prescribed by § 2-19-209 and to be used for the same purposes as described in § 2-19-209.

History. Acts 1999, No. 989, § 1; 2009, No. 326, § 2.

inserted “Division of Agriculture” and made a related change.

Amendments. The 2009 amendment

SUBCHAPTER 3 — LIMING MATERIALS

SECTION.

2-19-307. Quarterly tonnage reports.

2-19-307. Quarterly tonnage reports.

(a)(1)(A)(i) All manufacturers, importers, and other guarantors who are registered pursuant to § 2-19-306(a) shall forward to the State Plant Board each quarter a report on forms prescribed by the State Plant Board, not later than thirty (30) days after the end of each quarter.

(ii) Quarters shall end September 30, December 31, March 31, and June 30 of each year.

(B) The report shall include a sworn statement of the total tonnage of all liming materials distributed in this state and shall be accompanied by the sum of thirty cents (30¢) per ton or fractional ton.

(2) A fee of thirty cents (30¢) will accompany each quarterly report of tonnage which amounts to less than one (1) ton.

(3)(A) When sales or distributions of liming materials are between registrants, the registrant who sells or distributes to a person or firm who is not a registrant shall be responsible for payment of the inspection fee unless the payment is made by the registrant initiating the transaction.

(B) Invoices of transactions between registrants shall be marked "inspection fee paid" or "inspection fee not paid"; otherwise, the registrant initiating the transaction shall be responsible for the inspection fee.

(C) The State Plant Board shall issue receipts for the amounts received and shall deposit the sums received as follows:

(i) Twenty cents (20¢) of the thirty cent (30¢) fee per ton or fractional ton inspected shall be deposited with the Treasurer of State as special revenues. It shall be credited to the State Plant Board to be used for its maintenance, operation, support, and improvement; and

(ii)(a) Ten cents (10¢) of the thirty cent (30¢) fee per ton or fractional ton inspected shall be remitted to the Board of Trustees of the University of Arkansas. This amount shall be credited to a fund to be known as the "University of Arkansas, Division of Agriculture, Soil Testing and Research Fund" to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research and extension by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment stations, branch experiment stations, or subbranch experiment stations, as determined and designated by the Vice President for Agriculture of the University of Arkansas System.

(b)(1) The Board of Trustees of the University of Arkansas shall provide for the investment of any funds in the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund that are not needed for current operations of the soil testing laboratories and soil fertility service and research and extension activities and shall credit the interest earned on the investment to the credit of the University of Arkansas, Division of Agriculture, Soil Testing and Research Fund.

(2) The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the State Board of Finance.

(b)(1) The State Plant Board or its agents shall have the right at any time to inspect or audit the books of any manufacturer and manipulator

or their agents to determine the correctness of the monthly reports required under this section.

(2) Refusal to allow this inspection or audit shall be deemed a violation of this subchapter, and the violator shall be subject to the penalties provided in it.

(3) For a late report or for failure to report the entire amount sold, the tonnage fee on the late report or unreported amount shall be doubled, and penalties shall be deposited in the State Plant Board Fund; otherwise, registrations may be cancelled by the State Plant Board.

History. Acts 1969, No. 353, § 4; 1983, No. 724, § 2; A.S.A. 1947, § 77-1904; Acts 1993, No. 783, § 2; 2009, No. 326, § 3. inserted "Division of Agriculture" in (a)(3)(C)(ii)(a) and twice in (b)(1), and made related changes.

Amendments. The 2009 amendment

SUBTITLE 3. LIVESTOCK

CHAPTER 32 GENERAL PROVISIONS

SUBCHAPTER.

4. LIVESTOCK OWNER'S LIEN ACT.

SUBCHAPTER 4 — LIVESTOCK OWNER'S LIEN ACT

SECTION.

- 2-32-401. Title.
- 2-32-402. Definitions.
- 2-32-403. Livestock lien.
- 2-32-404. Perfection of livestock lien.
- 2-32-405. Commingled livestock — Priority.
- 2-32-406. Transfer of lien — Priority.

SECTION.

- 2-32-407. Lien priority generally.
- 2-37-408. Applicability.
- 2-37-409. Waiver, relinquishment, or release of lien prohibited.
- 2-37-410. Lien expiration — Action on an owner's lien.
- 2-32-411. Preference.

2-32-401. Title.

This subchapter shall be known and may be cited as the "Livestock Owner's Lien Act".

History. Acts 2013, No. 499, § 1.

2-32-402. Definitions.

As used in this subchapter:

- (1) "Affiliate" means a person that:
 - (A) Is directly or indirectly controlled by a first purchaser; or
 - (B) Directly or indirectly controls a first purchaser;
- (2) "Agreement to sell" means an enforceable oral or written agreement by which a livestock owner, either directly or through a sales agent, agrees to sell livestock to a first purchaser;

(3) "Control" or "controlled by" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership, by contract, or otherwise;

(4) "First purchaser" means the first person that purchases livestock, either directly or indirectly through a sales agent, under an agreement to sell;

(5) "Livestock" means cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, chickens, turkeys, and other domesticated animals raised primarily for human food consumption;

(6) "Livestock owner" means a person owning an interest in livestock before the acquisition of the livestock by a first purchaser;

(7) "Owner's lender" means a person that has a valid mortgage lien or security interest in a livestock owner's livestock at the time the livestock is delivered to the first purchaser;

(8) "Owner's lien" means a lien granted under this subchapter;

(9)(A) "Permitted lien" means the following liens or security interests:

(i) A mortgage lien or security interest granted by a first purchaser that:

(a) Secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee before August 16, 2013, and

(b) Has a principal amount and a fixed maturity stated in the mortgage lien or security interest; and

(ii) A validly perfected and enforceable lien created by statute in relation to livestock purchased under an agreement to sell that secures payment of indebtedness incurred by the first purchaser before August 16, 2013.

(B) "Permitted lien" does not include a mortgage lien or security interest that:

(i) Secures payment under a written instrument of indebtedness that is modified, amended, or restated from or after August 16, 2013, by a modification, amendment, or restatement that increases the principal amount that is owed at August 16, 2013, the effective date of this subchapter;

(ii) Secures payment under a written instrument of indebtedness that is modified, amended, or restated from or after the effective date of this subchapter by a modification, amendment, or restatement that extends the stated maturity of the written instrument of indebtedness that is in effect at August 16, 2013, or

(iii) Is not validly perfected with a first priority against the claims of all persons under applicable law other than a person holding a statutory or regulatory lien as to which first priority is granted by statute or regulation;

(10) "Person" means an individual or business entity, including without limitation an executor, administrator, estate, agent, trust, trustee, institution, receiver, business trust, firm, corporation, partnership, limited liability company, cooperative, joint venture, governmental entity or agency, association, and any other legal entity;

(11) "Proceeds" means:

(A) A right or amount paid or to be paid in consideration of or as a consequence of the sale of livestock, including without limitation cash proceeds, accounts, chattel paper, instruments, and payment intangibles;

(B) A by-product from the slaughter of livestock; and

(C) A right or amount paid or to be paid in consideration of or as a consequence of the sale of a by-product from the slaughter of livestock;

(12) "Purchaser" means a person that:

(A) Is not an affiliate of a first purchaser; and

(B) Takes, receives, or purchases livestock from a first purchaser;

(13)(A) "Sales agent" means a person that is authorized to sell livestock on behalf of or for the benefit of another person.

(B) "Sales agent" includes without limitation a livestock auction, auctioneer, commission company, or broker; and

(14) "Sales price" means the amount a first purchaser agrees to pay a livestock owner or a sales agent under an agreement to sell.

History. Acts 2013, No. 499, § 1.

2-32-403. Livestock lien.

(a)(1) To secure the obligations of a first purchaser to pay the sales price, a livestock owner is granted a lien in all livestock sold by the livestock owner for any unpaid portion of the sales price for the livestock.

(2) The lien granted under this section is granted and shall exist as part of and incident to the ownership of livestock.

(b) An owner's lien:

(1) Exists in and attaches immediately to all livestock on August 16, 2013, and

(2) Continues uninterrupted and without lapse:

(A) In all livestock upon and after sale of the livestock; and

(B) In and to all proceeds.

(c)(1) An owner's lien exists until the livestock owner or the sales agent entitled to receive the sales price has received the full amount of the sales price.

(2) A security interest or mortgage lien of an owner's lender attaches to the livestock owner's right to an owner's lien in livestock or in proceeds from the sale of the livestock.

(3) An owner's lender does not waive its security interest or mortgage lien or right in an owner's lien by approving or authorizing the livestock owner to sell the livestock under a sales agreement.

(d)(1) The validity of an owner's lien is not dependent on possession of the livestock by a livestock owner or sales agent.

(2) An owner's lien is not void or expired by reason of a change or transfer of the actual or constructive possession of or title to the

livestock from the livestock owner or sales agent to a first purchaser or subsequent purchaser.

History. Acts 2013, No. 499, § 1.

2-32-404. Perfection of livestock lien.

An owner's lien is perfected automatically from August 16, 2013, or the date a sales agreement is executed after August 16, 2013, without the need to file a financing statement or other type of documentation.

History. Acts 2013, No. 499, § 1.

2-32-405. Commingled livestock — Priority.

(a) If livestock subject to an owner's lien are commingled with other livestock in a manner that the identity of the specific livestock subject to the owner's lien cannot be determined by reasonable means, the owner's lien continues without interruption into and attaches to the commingled livestock and is perfected automatically as of the date of its original perfection but only as to the percentage of the commingled livestock equal to the number of livestock to which the owner's lien originally attached.

(b) An owner's lien in commingled livestock under subsection (a) of this section has priority over any security interest or other lien that is not an owner's lien or permitted lien regardless of whether the security interest or other lien has been properly perfected.

(c) If more than one (1) owner's lien attaches to commingled livestock, the owners' liens rank equally in the proportion that the respective sales prices secured by each owner's lien bear as a percentage of the total of the sales prices secured by all owners' liens applicable at the time the livestock were commingled.

History. Acts 2013, No. 499, § 1.

2-32-406. Transfer of lien — Priority.

(a)(1) A purchaser or sales agent takes free of an owner's lien otherwise applicable to the livestock purchased and is relieved of any obligations created under § 2-32-403 if the purchaser or sales agent pays the full amount of required consideration for the livestock under a good faith, noncollusive agreement to purchase the livestock.

(2) If a purchaser or sales agent pays the full amount of consideration under subdivision (a)(1) of this section, the owner's lien transfers to the proceeds paid by the purchaser or sales agent.

(b) An owner's lien shall continue uninterrupted in the proceeds paid to or otherwise due the first purchaser.

(c) Except as specifically provided in this section, an owner's lien has priority over the rights of a purchaser or sales agent.

History. Acts 2013, No. 499, § 1.

2-32-407. Lien priority generally.

Except for a permitted lien, an owner's lien takes priority over any other lien regardless of whether the lien arises by contract, law, equity, or otherwise.

History. Acts 2013, No. 499, § 1.

2-37-408. Applicability.

This subchapter does not affect the time at which legal title to livestock may pass by agreement or operation of law subject to an owner's lien.

History. Acts 2013, No. 499, § 1.

2-37-409. Waiver, relinquishment, or release of lien prohibited.

(a)(1) A livestock owner shall not be required as a condition or term of an agreement to sell or otherwise to:

(A) Waive, relinquish, or release an owner's lien or any rights under this subchapter other than upon payment in full of the sales price; or

(B) Agree to a provision that would apply the law of a state other than the State of Arkansas with respect to the rights granted under this subchapter.

(2) A waiver, relinquishment, release, or provision that violates subdivision (a)(1) of this section is void as a matter of the public policy of this state.

(b) A livestock owner or a sales agent acting on behalf of a livestock owner may waive, relinquish, or release an owner's lien or any rights under this subchapter or agree to a provision that would apply the law of a state other than the State of Arkansas with respect to the rights granted under this subchapter if the first purchaser:

(1) Posts a letter of credit in a form and amount satisfactory to the livestock owner or sales agent; or

(2) Both:

(A) Executes a contract that is satisfactory to the livestock owner or sales agent to prepay or escrow the sales price under an agreement to sell that is satisfactory to the livestock owner; and

(B) Performs all of the first purchaser's obligations under the contract.

History. Acts 2013, No. 499, § 1.

2-37-410. Lien expiration — Action on an owner's lien.

(a) An owner's lien expires one (1) year after the last day of the month following the date the sales price from the sale of livestock subject to the lien is required by law or contract to be paid to the livestock owner but only as to the particular livestock sold during the month unless an action to enforce the owner's lien is commenced in a court of competent jurisdiction during that time.

(b) If a sales agent advances the sales price for livestock to the livestock owner before the first purchaser pays the sales price in full to the livestock owner or sales agent, the sales agent shall assume and may enforce all rights of the livestock owner under this subchapter as to the livestock or the proceeds from the sale of the livestock.

(c)(1) In addition to any other court of competent jurisdiction, an action to enforce an owner's lien may be commenced in the district court of the county in which the:

- (A) Agreement to sell is executed;
- (B) Sales price is to be paid;
- (C) The livestock that have not been paid for are located; or
- (D) Proceeds may be found.

(2) The commencement of one (1) or more of the following proceedings by or against a person claiming an interest in property subject to an owner's lien tolls the one-year period in which to commence an action to enforce the owner's lien under subsection (a) of this section for an additional period of ninety (90) days from the earlier of the final conclusion or dismissal of the proceedings or the date final relief is obtained from the applicable tribunal authorizing the commencement of the action:

- (A) An action seeking to adjudicate the person as bankrupt or insolvent;
 - (B) An action seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of the person or the person's debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or
 - (C) An action seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for the person or for a substantial part of the person's property.
- (d) The prevailing party in an action to enforce this subchapter may recover costs and reasonable attorney's fees in any legal proceeding.
- (e) This subchapter does not impair or affect the right of a livestock owner or a sales agent to maintain a personal action to recover the debt against a person liable for payment of the sales price or to exercise any other available rights and remedies.

2-32-411. Preference.

If this subchapter conflicts with other rights a livestock owner may have, the livestock owner's right to receive the sales price shall be given preference.

History. Acts 2013, No. 499, § 1.

CHAPTER 33

ARKANSAS LIVESTOCK AND POULTRY COMMISSION

SUBCHAPTER 1 — GENERAL PROVISIONS

2-33-111. Livestock and poultry diagnostic services.

A.C.R.C. Notes. Acts 2010, No. 229, § 26, provided: "Effective July 1, 2005, all duties, functions, records, property, obligations, personnel, and authority to levy and collect diagnostic and laboratory fees, pursuant to Arkansas Code § 2-33-111 and § 2-33-112, for the Springdale Labo-

ratory of the Arkansas Livestock and Poultry Commission are hereby transferred by a Type 2 transfer from the Arkansas Livestock and Poultry Commission to the Division of Agriculture of the University of Arkansas."

2-33-112. Small animal diagnostic services.

A.C.R.C. Notes. Acts 2010, No. 229, § 26, provided: "Effective July 1, 2005, all duties, functions, records, property, obligations, personnel, and authority to levy and collect diagnostic and laboratory fees, pursuant to Arkansas Code § 2-33-111 and § 2-33-112, for the Springdale Labo-

ratory of the Arkansas Livestock and Poultry Commission are hereby transferred by a Type 2 transfer from the Arkansas Livestock and Poultry Commission to the Division of Agriculture of the University of Arkansas."

CHAPTER 35

MARKETING, SALE, AND TRANSPORTATION

SUBCHAPTER.

3. ARKANSAS BEEF COUNCIL.

SUBCHAPTER 3 — ARKANSAS BEEF COUNCIL

SECTION.

2-35-303. Creation — Members — Organization.**2-35-303. Creation — Members — Organization.**

(a) The Arkansas Beef Council is created.

(b)(1) The council shall be composed of seven (7) members appointed by the Governor and confirmed by the Senate as follows:

(A) Three (3) cattle producer members shall represent the Arkansas Farm Bureau Federation and shall be appointed from a list of names submitted by the board of directors of that organization;

(B) Three (3) cattle producer members shall represent the Arkansas Cattlemen's Association and shall be appointed from a list of names submitted by the board of directors of that organization; and

(C) One (1) member shall be an active Arkansas livestock market operator who shall be appointed from the state at large.

(2) Each year, not less than thirty (30) days prior to the expiration of the terms of the current council members whose terms expire in that year, the organizations named shall submit to the Governor two (2) nominees for each position to be filled on the council from the respective organizations. The Governor shall appoint a succeeding member to the council from each organization's list of nominees.

(3) Each member selected shall serve for a term of three (3) years and until his or her successor is duly selected as provided in this section.

(4) Vacancies in any unexpired term shall be filled by the Governor for the remainder of the unexpired term. The member appointed to fill the vacancy shall represent the same organization as the person whose term is unexpired.

(c) Members of the council shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the council whose duties shall be those customarily exercised by those officers or specifically designated by the council.

(d) The council may establish rules and regulations for its own government and for the administration of the affairs of the council.

History. Acts 1983, No. 160, § 2; A.S.A. 1947, § 78-1902.

Publisher's Notes. This section is being set out to reflect a correction in (b)(1).

CHAPTER 36

LIVESTOCK SHOWS AND FAIRS

SUBCHAPTER.

1. GENERAL PROVISIONS.

3. COUNTY AND DISTRICT SHOWS OR FAIRS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-36-101. Grading of fairs.

2-36-101. Grading of fairs.

(a) The Arkansas Livestock and Poultry Commission may formulate necessary and appropriate rules and regulations for the grading of fairs on a point system in cooperation with an ad hoc advisory committee formed of representatives of agriculture consisting of representatives

from the United States Department of Agriculture, the University of Arkansas Cooperative Extension Service, the Office of Agricultural Science and Technology of the Department of Career Education, and the Arkansas Fair Managers Association, which shall make recommendations as to criteria for the allotment of grade points to the commission.

(b) The advisory committee shall determine the entry classifications for which grade points would be allowed and delete from approval such classifications as beauty contests, baby shows, antique shows, skills contests, purchased machinery such as cars and farm equipment, or other noncreative categories which in their opinion would be nonproductive and not in accord with the concept of an agricultural and industrial convention.

History. Acts 1973, No. 317, §§ 6, 7; A.S.A. 1947, §§ 78-1615, 78-1616; Acts 1999, No. 1323, § 1; 2011, No. 776, § 2.

substituted "Department of Career Education" for "Department of Workforce Education" in (a).

Amendments. The 2011 amendment

SUBCHAPTER 3 — COUNTY AND DISTRICT SHOWS OR FAIRS

SECTION.

2-36-302. Northeast Arkansas District Fair Advisory Board.

trict Fair and Livestock Show.

2-36-306. North Central Arkansas Dis-

Effective Dates. Acts 2011, No. 116, § 2: Feb. 23, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Independence County has made the decision to move to a different district fair; that the Northeast Arkansas District Fair needs to be able to ensure that its operations continue to run in an efficient manner; and that this act is immediately necessary because the Northeast Arkansas District Fair Board and executive board need to be able to make the necessary preparations and advise the participants, vendors, and community of changes in a timely manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 131, § 5: Feb. 24, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that district fairs prepare for activities all year long and require insurance for their activities; that moving Independence County to the North Central Arkansas District Fair and Livestock Show in Izard County will require preparation and insurance, as well as other financial preparations; and that this act is immediately necessary because the North Central Arkansas District Fair and Livestock Show needs the legal authority to act to properly finance the change, procure the necessary insurance, and meet other financial responsibility requirements to incorporate Independence County into its district fair. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

2-36-302. Northeast Arkansas District Fair Advisory Board.

(a)(1) There is created the Northeast Arkansas District Fair Advisory Board, to be composed of the following members:

- (A) One (1) member from Mississippi County;
- (B) One (1) member from Craighead County;
- (C) One (1) member from Greene County;
- (D) One (1) member from Clay County;
- (E) One (1) member from Crittenden County;
- (F) One (1) member from St. Francis County;
- (G) One (1) member from Cross County;
- (H) One (1) member from Poinsett County;
- (I) One (1) member from Jackson County;
- (J) One (1) member from Lawrence County;
- (K) One (1) member from Randolph County;
- (L) One (1) member from Lee County;
- (M) One (1) member from Woodruff County; and
- (N) One (1) member from White County.

(2)(A) The county fair board of each county shall select the person from that county to be a member of the Northeast Arkansas District Fair Advisory Board.

(B) If any county does not have a county fair board, the county judge of that county shall appoint that county's representative to the Northeast Arkansas District Fair Advisory Board.

(C)(i) There is created an executive board that shall be composed of the members of the county fair board of the county in which the Northeast Arkansas District Fair is located.

(ii) The executive board shall be responsible for the day-to-day operations and maintenance of the Northeast Arkansas District Fair fairgrounds.

(3) Members of the Northeast Arkansas District Fair Advisory Board shall serve four-year terms, and any vacancies arising in the Northeast Arkansas District Fair Advisory Board membership shall be filled in the same manner as were the original appointments.

(b)(1) In all matters, the fair shall be subject to the rules of the Arkansas Livestock and Poultry Commission and otherwise conducted in the same manner as other district fairs.

(2) The location of the Northeast Arkansas District Fair shall be in Craighead County.

(c) The board shall annually select a chair from among its membership.

(d) After each federal decennial census, the membership on the board shall be reapportioned among the counties listed in subsection (a)

of this section in such manner as to reflect the proportionate population of each county relating to the district as a whole.

History. Acts 1983, No. 746, §§ 1, 2; A.S.A. 1947, §§ 78-1625, 78-1626; Acts 1987, No. 554, § 1; 1999, No. 99, § 1; 2011, No. 116, § 1; 2011, No. 131, § 1.

A.C.R.C. Notes. Subdivision (a)(1) was amended by both Acts 2011, No. 116, § 1, and No. 131, § 1. While the amendment by Acts 2011, No. 131, § 1, only concerned the removal of Independence County from the Northeast Arkansas District Fair Advisory Board, the amendment by Acts 2011, No. 116, § 1, made the same removal of Independence County from the Northeast Arkansas District Fair Advisory Board but also made other substantive changes to (a)(1). Given that the only substantive change made to subdivision (a)(1) by Acts 2011, No. 131, § 1, was also made by Acts 2011, No. 116, § 1, but Acts 2011, No. 116, § 1, made additional substantive changes, subdivision (a)(1) is set out above as amended by Acts 2011, No. 116, § 1, effective July 27, 2011. The amendment made to subdivision (a)(1) by Acts 2011, No. 131, § 1, read as follows:

“(a)(1) There is created the Northeast Arkansas District Fair Advisory Board, to be composed of twenty-nine (29) members:

“(A) Five (5) members from Mississippi County;

“(B) Four (4) members from Craighead County;

“(C) Two (2) members from Greene County;

- “(D) One (1) member from Clay County;
- “(E) Three (3) members from Crittenden County;
- “(F) Two (2) members from St. Francis County;
- “(G) One (1) member from Cross County;
- “(H) Two (2) members from Poinsett County;
- “(I) Two (2) members from Jackson County;
- “(J) One (1) member from Lawrence County;
- “(K) One (1) member from Randolph County;
- “(L) One (1) member from Lee County;
- “(M) One (1) member from Woodruff County; and
- “(N) Three (3) members from White County.”

Amendments. The 2011 amendment by No. 116 rewrote (a)(1); substituted “Northeast Arkansas District Fair Advisory Board” for “board” at the end of (a)(2)(B) and twice in (a)(3); added (a)(2)(C); deleted “and regulations” following “rules” in (b)(1); and rewrote (b)(2).

The 2011 amendment by No. 131 substituted “twenty-nine (29)” for “thirty-one (31)” in the introductory language of (a)(1); deleted (a)(1)(J) and redesignated the remaining subdivisions accordingly.

2-36-306. North Central Arkansas District Fair and Livestock Show.

(a) There is established a district livestock show to be known as the “North Central Arkansas District Fair and Livestock Show” and to be located in Izard County.

(b) Counties composing the North Central Arkansas District Fair and Livestock Show district shall be Cleburne County, Fulton County, Independence County, Izard County, Sharp County, Stone County, and Van Buren County.

(c) The North Central Arkansas District Fair and Livestock Show shall enjoy the same privileges and status as previously established district livestock shows in the State of Arkansas.

(d)(1) There is created the North Central Arkansas District Fair Board, to be composed of fourteen (14) members. Two (2) members shall be selected from each county. One (1) member in each county shall be

selected by the livestock show association in the county, and one (1) shall be selected by the Arkansas Farm Bureau Federation.

(2) The members of the board shall serve four-year terms. Any vacancies arising in the board membership shall be filled in the same manner as were the original appointments.

History. Acts 1997, No. 881, § 1; 1999, No. 99, § 2; 2001, No. 358, § 1; 2011, No. 131, §§ 2, 3.

A.C.R.C. Notes. Acts 2011, No. 131, § 4, provided: "(a) Within thirty (30) days after the effective date of this act, the two (2) new members of the North Central Arkansas District Fair Board from Independence County shall be selected as provided under Arkansas Code § 2-36-306(d)(1).

"(b) The terms of the two (2) new members of the board from Independence County shall be:

"(1) Staggered in sequence with the expiration dates of the board members that held the position on the effective date of this act to avoid the terms of the two (2)

new members expiring in the same year; and

"(2) Determined by lot.

"(c)(1) If necessary to avoid the terms of the two (2) new members of the board from Independence County expiring in the same year, the terms of the initial two (2) new members may be for a period of less than four (4) years.

"(2) Subsequent appointments to the board from Independence County shall be for a period of four (4) years."

The effective date of Acts 2011, No. 131, is February 24, 2011.

Amendments. The 2011 amendment inserted "Independence County" in (b); substituted "fourteen (14)" for "twelve (12)" in (d)(1); and deleted the last sentence in (d)(2).

CHAPTER 37

ARKANSAS FEED LAW OF 1997

2-37-107. Adulteration.

A.C.R.C. Notes. Acts 2013, No. 1511, § 1, provided:

"(a)(1) The Arkansas Department of Environmental Quality shall not grant or deny coverage under a general permit for a discharge from a Concentrated Animal Feeding Operations until the applicant publishes a notice of the Notice of Intent application under a general permit for Concentrated Animal Feeding Operations twice a week for six (6) consecutive weeks in a newspaper:

"(A) Of general statewide daily publication; and

"(B) Published in the county where the land described in the application is located.

"(2) The contents and form of the notice shall be prescribed by the Arkansas Department of Environmental Quality.

"(b)(1) A committee shall develop a policy concerning the procedure for an

applicant to give sufficient notice of a Notice of Intent of application under a general permit for Concentrated Animal Feeding Operations.

"(2)(A) The committee shall consist of five (5) members.

"(B) Each of the following shall select one member:

"(i) The Arkansas Department of Environmental Quality;

"(ii) The Arkansas Agricultural Department; and

"(iii) The Arkansas Farm Bureau.

"(C) Two (2) members shall be appointed by the Governor.

"(3) The committee shall make its recommendation to Legislative Council on or before December 31, 2013.

"(c) This section shall be effective for one (1) year from the effective date of this act."

CHAPTER 38

LIVESTOCK RUNNING AT LARGE OR STRAYING

SUBCHAPTER.

5. FERAL HOGS.

SUBCHAPTER 5 — FERAL HOGS

SECTION.

2-38-501. Definition.

2-38-502. Capturing and killing feral hogs.

SECTION.

2-38-504. Releasing hogs into the wild.

2-38-501. Definition.

As used in this subchapter:

(1)(A) “Feral hog” means an animal or hybrid animal of either the family Suidae, including without limitation a wild hog, Russian or European wild boar, and Old World swine, or the family Tayassuidae, including without limitation peccary, javelina, and New World swine, that is or has been roaming freely upon public land or private land.

(B) “Feral hog” includes a hog that is not conspicuously identified as required under §§ 2-34-101 and 2-34-102.

(C) “Feral hog” does not include:

(i) A stray domestic hog that has escaped from domestic confinement for less than:

(a) Five (5) calendar days; or

(b) Fifteen (15) calendar days if the owner of the stray domestic hog provides notice of the escape to all adjacent landowners within the first five (5) calendar days of the escape; or

(ii) A hog held by a zoo accredited by the Association of Zoos and Aquariums or by the designated caretakers of the University of Arkansas mascot; and

(2) A “feral hog” is deemed to be a public nuisance.

History. Acts 1999, No. 457, § 1; 2007, No. 827, § 5; 2013, No. 1104, § 1.

Amendments. The 2013 amendment redesignated and rewrote former (1) as

(1)(A); rewrote (1)(B) and (1)(C); and substituted “a public nuisance” for “domestic livestock” in (2).

2-38-502. Capturing and killing feral hogs.

(a) A person may capture or kill a feral hog only as follows:

(1) On private land if the person is the landowner or lessee or has the permission of the landowner or lessee; and

(2)(A) On public land if:

(i) Allowed by the landowner; and

(ii) The person possesses a valid Arkansas hunting license and complies with Arkansas hunting regulations.

(B) However, a certified law enforcement officer or a public employee engaged in the performance of his or her official duties is exempt from the requirement under subdivision (a)(2)(A) of this section.

(b) A person whose hunting license is revoked shall not take or kill a feral hog during the period of the revocation.

(c) A feral hog captured by any means in accordance with subsection (a) of this section shall be immediately:

(1) Killed; or

(2)(A) Permanently identified by eartag approved by the Arkansas Livestock and Poultry Commission and transported to a terminal facility that is certified by the commission.

(B) A feral hog that is transported to a terminal facility under subdivision (c)(2)(A) of this section is exempt from any requirements for disease testing established by the commission.

(C) The commission shall adopt regulations for the issuance of a certification permit for a terminal facility and the requirements for inspection of a terminal facility.

(D) As used in this subsection, "terminal facility" means a facility for the containment of domestic and feral hogs that requires that a hog be killed before leaving the facility.

(E) A feral hog shall not be released into the wild under any circumstances.

History. Acts 1999, No. 457, § 1; 2013, No. 1104, § 2.

Amendments. The 2013 amendment rewrote the section.

2-38-504. Releasing hogs into the wild.

(a) A person who knowingly releases or attempts to release a live hog upon public land upon conviction is guilty of an unclassified felony and is subject to a fine of not less than one thousand dollars (\$1,000) per hog nor more than five thousand dollars (\$5,000) per hog or imprisonment not to exceed two (2) years, or both.

(b)(1) A person who knowingly releases or attempts to release a live hog on private property upon conviction is guilty of an unclassified misdemeanor and is subject to a fine of not less than one thousand dollars (\$1,000) per hog nor more than five thousand dollars (\$5,000) per hog or imprisonment not exceeding thirty (30) days, or both.

(2) However, subdivision (b)(1) of this section does not prohibit a person from:

(A) Introducing a domestic hog for farm purposes onto private property enclosed with a fence sufficient under § 2-39-101 et seq. and with permission of the owner or lessee of the property; or

(B)(i) Continuing to operate a hog-hunting facility established before August 16, 2013, if:

(a) The hog-hunting facility and operation meet the requirements imposed by the Arkansas Livestock and Poultry Commission for animal identification, transportation, and quarantine;

(b) The hog-hunting facility and operation are subject to periodic inspections by the commission; and

(c) The hog-hunting facility and operation are certified by the commission as a terminal facility, as defined in § 2-38-502(c).

(ii) An owner or operator of a hog-hunting facility that is in operation before August 16, 2013, that does not meet the requirements stated in subdivision (b)(2)(B)(i) of this section is prohibited from purchasing or transporting a live feral hog under this subchapter.

(iii) Except as provided in subdivision (b)(2)(B)(i) of this section, a person is prohibited from establishing or operating a business in which one (1) or more feral hogs are placed in one (1) or more fenced enclosures, regardless of the size of the enclosure, for the purpose of conducting a hog-hunting operation.

(c) A person who knowingly purchases, sells, offers for sale, receives, possesses, imports, distributes, or transports a live feral hog upon conviction is guilty of an unclassified misdemeanor and is subject to a fine of one thousand dollars (\$1,000) per hog or imprisonment not exceeding thirty (30) days, or both.

(d) Upon the arrest of a person under this section, the arresting law enforcement officer shall seize and take custody of any hog in the possession of the arrested person and may seize any equipment used in furtherance of the violation, including without limitation a motor vehicle, trailer, and trap.

(e)(1) A court having competent jurisdiction:

(A) Shall order the forfeiture and immediate euthanasia of any hog that was the basis of a conviction under this section;

(B) May order the forfeiture and immediate euthanasia of a hog before a conviction if the court determines that the hog poses an imminent risk to public health or safety; and

(C) May order the forfeiture of any seized equipment.

(2) However:

(A) A conveyance used by any person as a common carrier is not subject to forfeiture under this subsection unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the violation;

(B) Equipment is not subject to forfeiture under this subsection by reason of any act or omission established by the owner of the equipment to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the equipment with the owner's permission; and

(C) A forfeiture of equipment encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the equipment in the commission or attempt to commit the violation.

(f) In addition to the fines, penalties, and forfeitures imposed under this section, a court may require the defendant to make restitution to

the state or any of its political subdivisions for transporting, housing, feeding, euthanizing, and disposing of any hog forfeited under this section.

History. Acts 1999, No. 457, § 3; 2005, No. 1994, § 22; 2007, No. 827, § 6; 2011, No. 567, § 1; 2013, No. 1104, § 3.

Amendments. The 2011 amendment deleted “Unless the landowner has consented” at the beginning of (a); and substituted “a fine of one thousand dollars

(\$1,000) for each hog released” for “a fine not to exceed five hundred dollars (\$500)” in (b).

The 2013 amendment rewrote (a); redesignated and rewrote (b) as (b)(1); and added (b)(2) and (c) through (f).

CHAPTER 39

FENCES

SECTION.

2-39-102. Definition of fence.

2-39-102. Definition of fence.

As used in this chapter and all laws referring to this chapter, “fence” means a structure that is a boundary or barrier that limits human, livestock, or vehicle ingress or egress in an area.

History. Rev. Stat., ch. 76, §§ 2, 3; Acts 1899, No. 104, § 2, p. 168; C. & M. Dig., §§ 4646, 4647; Pope’s Dig., §§ 5735, 5736; A.S.A. 1947, §§ 78-1202, 78-1203; Acts 2001, No. 176, § 2; 2013, No. 960, § 1.

Amendments. The 2013 amendment rewrote this section.

TITLE 3

ALCOHOLIC BEVERAGES

CHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION AND ENFORCEMENT.
3. PROHIBITED PRACTICES.
4. ALCOHOLIC BEVERAGES GENERALLY — PERMITS.
5. BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY.
7. EXCISE TAXES.
8. LOCAL OPTION.
9. ON-PREMISES CONSUMPTION.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

3-1-104. Industry member conduct — Do-

nation of intoxicating liquor.

3-1-104. Industry member conduct — Donation of intoxicating liquor.

(a) As used in this section:

- (1) "Industry member" means any one (1) or more of the following:
 - (A) A distiller, manufacturer, importer, producer, wholesaler, or distributor of intoxicating liquor that holds a valid and appropriate permit issued by the Alcoholic Beverage Control Division;
 - (B) An agent of a distiller, manufacturer, importer, producer, wholesaler, or distributor of intoxicating liquor, including without limitation an employee, shareholder, owner, partner, corporate officer, or director; or
 - (C) A business paid by a distiller, manufacturer, importer, producer, wholesaler, or distributor of intoxicating liquor to assist in targeting and promoting the sale of intoxicating liquor, including without limitation an advertising agency or marketing firm; and
- (2) "Retailer" means a person or business that:
 - (A) Is devoted wholly or partially to the sale of intoxicating liquor at retail; and
 - (B) Holds a valid retailer's permit issued by the division.

(b) An industry member or retailer may donate intoxicating liquor for on-premises consumption at a function to a charitable or nonprofit organization that does not have a permit to dispense intoxicating liquors if the premises used by the nonprofit organization has a permit for on-premises consumption of alcoholic beverages issued by the Director of the Alcoholic Beverage Control Division, if a permit is required by applicable law.

(c) An industry member may provide keg-tapping equipment and hook-up service to a charitable or nonprofit organization at a function.

History. Acts 2013, No. 527, § 1.

CHAPTER 2

ADMINISTRATION AND ENFORCEMENT

SUBCHAPTER.

2. PRIMARY REGULATORY AGENCIES.
4. DISTRIBUTION.

SUBCHAPTER 2 — PRIMARY REGULATORY AGENCIES

SECTION.

- | | |
|---|---|
| 3-2-205. Powers and duties. | — Deputy Director of Education — Law enforcement officer. |
| 3-2-206. Rules and regulations. | |
| 3-2-210. Authority of enforcement agent | |

3-2-205. Powers and duties.

(a) The Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division shall have full responsibility for all phases of alcoholic beverage control in Arkansas.

(b) The Alcoholic Beverage Control Division shall have the following powers, functions, and duties:

(1) To fix by rule the standards of manufacturing, rectifying, and blending in order to ensure the use of proper ingredients and methods in the manufacturing, rectifying, and blending of vinous, spirituous, or malt liquors to be sold in the state;

(2) To adopt rules and regulations for the supervision and control of the manufacture and sale of vinous (except wines), spirituous, or malt liquors throughout the state not inconsistent with law;

(3) To prescribe forms of applications for permits under this act and of all periodic reports deemed necessary to be made by any permittee;

(4) To fix the hours during which vinous, spirituous, or malt liquors may be sold or dispensed at retail, as provided by this act;

(5)(A) To keep records in proper form, to be prescribed by the Director of the Alcoholic Beverage Control Division and the Director of the Department of Finance and Administration, of all permits issued and all permits revoked under the provisions of this act and to keep records in such form so as to provide ready information as to the identity of all permit holders, including the names of stockholders who are not exempted under subdivision (b)(5)(B) of this section, and directors of corporations holding permits, and also the location of all permitted premises.

(B) The Alcoholic Beverage Control Division is not required to keep a record of the names of shareholders who are not the president or a director when the corporation:

(i) Is publicly traded on a nationally recognized stock exchange; or

- (ii) Holds at least ten (10) permits issued by the Alcoholic Beverage Control Division for the sale of alcoholic beverages; and
- (6) To adopt rules and regulations for the supervision and control of nonresident beer sellers' permits.

(c) The Director of the Alcoholic Beverage Control Division shall have the following powers, functions, and duties:

(1) To receive applications for and to issue, refuse, suspend, and revoke licenses to manufacturers, processors, distributors, wholesalers, retailers, and transporters of alcoholic beverages;

(2) To call upon other administrative departments of the state, county, and city governments, sheriffs, city police departments, city marshals, and peace officers for such information and assistance as the Director of the Alcoholic Beverage Control Division may deem necessary in the performance of the duties imposed upon him or her by this subchapter;

(3) To inspect or cause to be inspected any premises where alcoholic beverages are manufactured, distributed, or sold;

(4) In the conduct of any hearing:

(A) To examine or cause to be examined under oath any person, and examine or cause to be examined books and records of any licensee;

(B) To hear testimony and to take proof material for his or her information and the discharge of his or her duties hereunder;

(C) To administer or cause to be administered oaths; and

(D) For any such purposes, to issue subpoenas to require the attendance of witnesses and the production of books. These subpoenas shall be effective in any part of this state. Any circuit court, either in term time or vacation, by order duly entered may require the attendance of witnesses or the production of relevant books subpoenaed by the Director of the Alcoholic Beverage Control Division, and the court may compel obedience to its order by proceedings for contempt;

(5) Such other powers, functions, and duties as are or may be imposed or conferred upon him or her by law; and

(6) Any other powers, functions, and duties pertaining to the control of alcoholic beverages which previously were granted to the Director of the Department of Finance and Administration and which are not specifically delegated to the board by the provisions of this subchapter.

(d) The Director of the Alcoholic Beverage Control Enforcement Division shall have the following functions, powers, and duties:

(1) To call upon other administrative departments of the state, county, and city governments, sheriffs, city police departments, city marshals, and peace officers for such information and assistance as he or she may deem necessary in the performance of the duties imposed upon the Director of the Alcoholic Beverage Control Division by this subchapter;

(2) To inspect or cause to be inspected any premises where alcoholic beverages are manufactured, distributed, or sold;

(3) Such other powers, functions, and duties as are or may be imposed or conferred upon him or her by law; and

(4) Any other powers, functions, and duties pertaining to the control of alcoholic beverages which previously were granted to the Director of the Department of Finance and Administration and which are not specifically delegated to the Director of the Alcoholic Beverage Control Division or the board by the provisions of this subchapter.

(e)(1) The power and duty to collect taxes imposed on alcoholic beverages and to collect permit and license fees levied for the privilege of manufacturing, processing, selling, and transporting alcoholic beverages is specifically excepted from the powers and duties granted or assigned to the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division. Provided, however, the permit or license holders' failure to pay taxes imposed on alcoholic beverages or any state or local gross receipts and compensating use taxes in a timely manner shall be grounds for the revocation or nonrenewal of their permits or licenses by the board.

(2) The collection of all such taxes and permit or license fees shall be by the Director of the Department of Finance and Administration and his or her agents and employees, as provided by law.

(3) The Director of the Department of Finance and Administration shall make a biennial report to the Governor and the General Assembly of his or her activities for the past year, which shall include statistics as to the amount of vinous (except wines), spirituous, or malt liquors manufactured in the State of Arkansas and the disposition thereof; the increase or decrease in their consumption over the preceding year; the amount of taxes and permit fees collected; and such other information as he or she deems advisable.

(4) The Director of the Department of Finance and Administration shall report by June 1 of each year to the Alcoholic Beverage Control Division and the board any and all permit and license holders who are more than ninety (90) days delinquent on any alcoholic beverage sales tax, excise tax, supplemental mixed drink tax, any other tax relating to the sale or dispensing of alcoholic beverages, or any state or local gross receipts or compensating use taxes.

History. Acts 1935, No. 108, Art. 2, § 3; Pope's Dig., § 14104; Acts 1951, No. 159, §§ 6, 11; A.S.A. 1947, §§ 48-203, 48-1305, 48-1310; Acts 1993, No. 779, § 1; 1995, No. 537, § 11; 2013, No. 325, § 1.

redesignated former (b)(5) as (b)(5)(A); in (b)(5)(A), substituted "permit holders" for "permits," and inserted "who are not exempted under subdivision (b)(5)(B) of this section"; and added (b)(5)(B).

Amendments. The 2013 amendment

3-2-206. Rules and regulations.

(a) The Director of the Alcoholic Beverage Control Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this subchapter and any other alcohol control acts enforced in this state.

(b) All rules and regulations of general application, including the amendment or repeal thereof, shall first be submitted by the director to the Alcoholic Beverage Control Board for its approval and upon approval shall be filed in the office of the Secretary of State.

(c) All the valid rules and regulations adopted under the provisions of this subchapter shall be absolutely binding upon all licensees and enforceable by the director through the power of suspension or cancellation of licenses.

(d) It is intended by this grant of power to adopt rules and regulations that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.

(e) The Alcoholic Beverage Control Division is authorized to assess a regulation book fee which shall not exceed ten dollars (\$10.00) for each regulation book.

History. Acts 1951, No. 159, § 12; **Amendments.** The 2013 amendment A.S.A. 1947, § 48-1311; Acts 2013, No. 1318, § 1.

3-2-210. Authority of enforcement agent — Deputy Director of Education — Law enforcement officer.

(a) The right of any enforcement agent, law enforcement officer, or the Deputy Director of Education of the Alcoholic Beverage Control Division, when duly designated by the Director of the Alcoholic Beverage Control Enforcement Division, to enter, inspect records, and seize contraband in or on any licensed premises shall be deemed to be a condition of the license or permit to sell alcoholic beverages granted by this state.

(b) A duly designated enforcement agent or the deputy director shall have all powers, rights, and protection provided to all other law enforcement officers by the laws of this state, specifically including the power of arrest and service of warrants and the right to bear arms in the line of duty.

History. Acts 1951, No. 159, §§ 20, 21; A.S.A. 1947, §§ 48-1319, 48-1320; Acts 2013, No. 1101, § 1.

Amendments. The 2013 amendment substituted "agent — Deputy Director of Education — Law enforcement officer" for "agents" in the introductory language; in

(a), deleted "or" following "enforcement agent," "search" following "to enter," and inserted "or the Deputy Director of Education of the Alcoholic Beverage Control Enforcement Division"; and substituted "agent or the deputy director" for "agents" in (b).

SUBCHAPTER 4 — DISTRIBUTION

SECTION.

3-2-403. Spirituous and vinous beverages — Registration of brands

and labels — Designation of licensed wholesaler.

Effective Dates. Acts 2013, No. 1105, § 4: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a supplier of an alcoholic beverage is not required to file an application with the Alcoholic Beverage Control Division each calendar year; that suppliers should be required to register with the division each calendar year; and that the division's yearly registration period begins on April 1. There-

fore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-2-403. Spirituous and vinous beverages — Registration of brands and labels — Designation of licensed wholesaler.

(a) As used in this section, "brand label" means the label carrying the distinctive design of a brand name of a spirituous liquor or vinous liquor.

(b)(1) Every manufacturer, importer, or producer of spirituous and vinous beverages, as defined by § 3-1-102, doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand of spirituous and vinous beverages and the brand label extension of each brand of spirituous and vinous beverages to be shipped for the first time by the shipper into or within the state and shall designate in the application for registration one (1) licensed liquor wholesaler in the state, who shall be the exclusive distributor of such brand or label within the state. Such designated wholesaler shall be initially approved by the Director of the Alcoholic Beverage Control Division and shall not be changed or initially disapproved except for good cause, and the director shall determine good cause after a hearing pursuant to the provisions set out in this subchapter. Any brands or labels previously registered in this state and which have subsequently been withdrawn from distribution in this state shall be treated in the same manner as the initial registration of brands or labels and are subject to the provisions of this section.

(2) A brand label and a brand label extension shall be registered by the supplier before the first shipment of each brand label and brand label extension into or within the state on or after July 1, 2013.

(c) A copy of the Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand label and brand label extension shall be submitted with the registration of each brand label and brand label extension.

(d) The registration of a brand label and a brand label extension shall:

(1) Be in writing or electronically submitted as prescribed by the Director of the Alcoholic Beverage Control Division;

(2) Be verified if it is submitted in writing; and
 (3) Set forth information as the Director of the Alcoholic Beverage Control Division requires.

(e) Each Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval submitted for registration shall be accompanied by a registration fee of fifteen dollars (\$15.00) payable by check, cash, money order, or electronic payment.

(f) The registration shall be renewed annually.

(g) The division shall promulgate rules to administer and implement this section.

History. Acts 1991, No. 260, § 2; 2013, No. 1105, § 1.

Amendments. The 2013 amendment inserted (a); in (b)(1), designated subdivision, substituted “Alcohol and Tobacco Tax

and Trade Bureau Certificate of Label Approval” for “label” and inserted “and the brand label extension of each brand of spirituous and vinous beverages”; and inserted (b)(2) and (c) through (g).

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas’s Response to *Granholm v. Heald*: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

CHAPTER 3

PROHIBITED PRACTICES

SUBCHAPTER.

2. PARTICULAR PRACTICES PROHIBITED.

SUBCHAPTER 2 — PARTICULAR PRACTICES PROHIBITED

SECTION.

- 3-3-202. Knowingly furnishing or selling to minor.
- 3-3-203. Purchase or possession by minor.
- 3-3-204. Handling by minor.
- 3-3-210. Sale on Sunday or early week-day mornings.

SECTION.

- 3-3-216. Possession or sale of untaxed intoxicating liquor.
- 3-3-219. Social hosts — Criminal liability.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made

since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or
(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 763, § 6: Apr. 1, 2009. Emergency clause provided: "It is hereby found and determined that Act 294 of 2009 became effective, by emergency clause, on March 3, 2009, and that it has been found that there are some technical corrections that need to be placed into immediate operation. It is further determined that these technical corrections are necessary to give full force and effect to the provisions of Act 294 of 2009 and that if this technical corrections bill is not passed with an emergency clause then unnecessary confusion concerning the provisions of Act 294 of 2009 may arise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or
(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or
(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-3-202. Knowingly furnishing or selling to minor.

(a)(1) It shall be unlawful for any person knowingly to give, procure, or otherwise furnish any alcoholic beverage to any person under twenty-one (21) years of age. However, this subsection shall not apply to the serving of an alcoholic beverage to the person's family or to the use of wine or beer in any religious ceremony or rite in any established church or religion.

(2)(A) Upon a first conviction, any person violating this subsection shall be guilty of a Class A misdemeanor.

(B) Upon a second conviction within three (3) years, a person violating this section shall be guilty of a Class D felony.

(b)(1) It shall be unlawful for any person knowingly to sell or otherwise furnish for money or other valuable consideration any alcoholic beverage to any person under twenty-one (21) years of age.

(2)(A) Upon a first conviction, any person violating this subsection shall be guilty of a Class D felony and shall be punished as provided by law.

(B) Upon a second conviction within five (5) years, a person violating this section shall be deemed guilty of a Class C felony and may be imprisoned or fined, or both as provided by law.

(c)(1) A warning notice that includes the provisions of subsections (a) and (b) of this section shall be posted in public view in each place of business where alcoholic beverages are sold.

(2) The warning notice shall be posted in a manner prescribed by the Alcoholic Beverage Control Board.

History. Acts 1967, No. 277, §§ 1, 2; A.S.A. 1947, § 48-903; Acts 1993, No. 875, § 2; 1995, No. 446, § 1; 2005, No. 1767, § 1; 2005, No. 1994, § 405; 2009, No. 352, § 1; 2009, No. 948, § 1.

Amendments. The 2009 amendment by No. 352 substituted “this subsection shall not apply to the serving of an alco-

holic beverage to the person’s” for “this section shall not apply to the serving of such to one’s” in (a)(1) and changed “Class C misdemeanor” to “Class A misdemeanor” in (a)(2)(A).

The 2009 amendment by No. 948 inserted “or beer” in (a)(1).

3-3-203. Purchase or possession by minor.

(a)(1) It is unlawful for any person under twenty-one (21) years of age to purchase or have in his or her possession any intoxicating liquor, wine, or beer.

(2) For the purposes of this section, intoxicating liquor, wine, or beer in the body of a person under twenty-one (21) years of age is deemed to be in his or her possession.

(b) It shall also be unlawful for an adult to purchase on behalf of a person under twenty-one (21) years of age any intoxicating liquor, wine, or beer.

(c) A person eighteen (18) years of age or older violating this section is guilty of a violation and upon conviction shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(d) In addition to the penalties provided in this section, the trial judge or magistrate may impose the following penalty or penalties or any combination thereof:

(1) Require a person eighteen (18) years of age or older but under twenty-one (21) years of age to write themes or essays on intoxicating liquors, wine, or beer; and

(2) Place a person eighteen (18) years of age or older but under twenty-one (21) years of age under probationary conditions as determined by the court in its reasonable discretion designed as a reasonable and suitable preventive and educational safeguard to prevent future violations of this section by the person.

(e)(1) In addition to the fine authorized by subsection (c) of this section, at the time of arrest of a person eighteen (18) years of age or older for violation of the provisions of subsection (a) of this section, the arrested person shall immediately surrender his or her license, permit, or other evidence of driving privilege to the arresting law enforcement officer as provided in § 5-65-402.

(2)(A) The Office of Driver Services or its designated official shall suspend or revoke the driving privilege of the arrested person or shall suspend any nonresident driving privilege of the arrested person, as provided in § 5-65-402.

(B) The period of suspension or revocation shall be based on the offense that caused the surrender of the arrested person's license, permit, or other evidence of driving privilege as described in subdivision (e)(1) of this section and the number of any previous offenses as follows:

(i) Suspension for sixty (60) days for a first offense under subsection (a) of this section;

(ii) Suspension for one hundred twenty (120) days for a second offense under subsection (a) of this section; and

(iii) Suspension for one (1) year for a third or subsequent offense under subsection (a) of this section.

(3) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privileges, the office shall consider as a previous offense any conviction under subsection (a) of this section which occurred either prior to or after August 12, 2005.

(f) A person less than eighteen (18) years of age who violates this section is subject to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

History. Acts 1967, No. 44, § 1; 1979, No. 61, § 1; A.S.A. 1947, § 48-903.1; Acts 1997, No. 1210, § 1; 2005, No. 1535, § 1; 2005, No. 1994, § 28; 2009, No. 956, § 1; 2011, No. 1152, § 1; 2013, No. 1123, § 1.

Amendments. The 2009 amendment substituted "A person eighteen (18) years of age or older" for "Any person" in (c); substituted "eighteen (18) years of age or older but under twenty-one" for "under

twenty-one" in (d)(1) and (d)(2); inserted "of a person eighteen (18) years of age or older" in (e)(1); and added (f).

The 2011 amendment substituted "It is unlawful" for "It shall be unlawful" in (a)(1); and substituted "is deemed" for "shall not be deemed" in (a)(2).

The 2013 amendment substituted "person under twenty-one (21) years of age" for "minor" in (a)(2).

3-3-204. Handling by minor.

(a) Except as provided in subsection (b) or subsection (c) of this section, it is unlawful for a wholesaler, retailer, or transporter of alcoholic beverages to allow an employee or any other person under twenty-one (21) years of age to have anything to do with the selling, transporting, or handling of an alcoholic beverage.

(b) With the written consent of a parent or guardian, a person eighteen (18) years of age and older may:

(1) Sell or otherwise handle beer and wine at retail grocery establishments; or

(2) Be employed by a licensed liquor wholesaler or licensed beer wholesaler or by a licensed native winery to handle alcoholic beverages at the place of business of the licensed wholesaler or winery.

(c) A person nineteen (19) years of age and older may sell and handle alcoholic beverages at a restaurant, private club, hotel, or motel that is licensed for on-premises consumption of alcoholic beverages under this chapter.

(d)(1) A person who violates this section is guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

(2) The violation shall be grounds for suspension, cancellation, or revocation by the Director of the Alcoholic Beverage Control Division of any permit issued to the person by the director.

History. Acts 1969, No. 129, §§ 1, 2; 1983, No. 527, § 1; A.S.A. 1947, §§ 48-903.2, 48-903.3; Acts 1987, No. 515, § 1; 1999, No. 1169, § 1; 2001, No. 1553, § 3; 2003, No. 1807, § 1; 2005, No. 1994, § 28; 2009, No. 294, § 1; 2013, No. 527, § 2.

Amendments. The 2009 amendment substituted “§ 3-9-301” for “§ 3-9-501” in (c).

The 2013 amendment rewrote the section.

3-3-205. Sale or possession without license.

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas’s Response to *Granholm v. Heald*: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

3-3-210. Sale on Sunday or early weekday mornings.

(a)(1) A person who sells intoxicating alcoholic liquor on Sunday, except as such sales are authorized by §§ 3-9-215 and 3-9-216, and subdivision (a)(3) of this section, or between 1:00 a.m. and 7:00 a.m. on weekdays is guilty of a violation and for the first offense shall be punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

(2) For the second and subsequent offenses, the person is guilty of a Class B misdemeanor.

(3) A person that holds a permit that allows on-premises consumption of alcoholic beverages may operate on Sundays between the hours of 10:00 a.m. and 12:00 midnight.

(4)(A) A city, town, or county may establish by ordinance a lesser period of time than provided in subdivision (a)(3) of this section during which on-premises consumption of alcoholic beverages may occur at on-premises outlets.

(B) The city, town, or county ordinance shall specify the on-premises outlets that are subject to the more restrictive hours of operation on a Sunday.

(5) A violation of a more restrictive city, town, or county ordinance is not an administrative violation against the Alcoholic Beverage Control Division on-premises consumption permit and shall be treated and disposed of under § 3-4-407.

(6) The hours of operation of private club permitted establishments shall continue to be controlled by Alcoholic Beverage Control Division rules.

(b)(1)(A) As a further exception to the Sunday sales prohibition set out in subsection (a) of this section, counties and cities in the state

may refer to the voters at an election the issue of whether to authorize the sale of alcoholic beverages for off-premises consumption on Sundays between the hours of 10:00 a.m. and 12:00 midnight or within a lesser period within the hours as may be provided under a referendum election conducted in accordance with the following:

(i) A referendum election may be called in a city by a petition filed with the city clerk signed by fifteen percent (15%) of the qualified electors who cast a vote in the city for the Office of Governor in the last general election in which the office appeared on the ballot; or

(ii) A referendum election may be called in a county by a petition filed with the county clerk signed by fifteen percent (15%) of the qualified electors who cast a vote in the county for the Office of Governor in the last general election in which the office appeared on the ballot.

(B) The Sunday sale of alcoholic beverages authorized in this subsection shall be limited to those businesses within the county or city that possess a current and valid license for the sale of alcoholic beverages issued by the Alcoholic Beverage Control Division.

(2)(A) The election under this subsection shall be conducted on a citywide or countywide basis.

(B) All qualified electors within the city or county, as the case may be, shall be eligible to vote even though they may reside in a dry area.

(C) The election under this subsection on the Sunday sales question shall be held in accordance with the procedures established for on-premises consumption elections by § 3-9-201 et seq., and the ballot for the election shall be printed substantially as follows:

"() FOR THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES ON SUNDAY IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

() AGAINST THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES ON SUNDAY IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW."

(3)(A) The vote of the majority of the electors in a citywide election approving Sunday sales shall authorize the sales in all permitted outlets located within the incorporated areas of the city only.

(B) The vote of the majority of the electors in a countywide election approving Sunday sales shall authorize the sales in all permitted outlets located anywhere within the county.

(4) The vote of the majority of the electors against the off-premises sale of alcoholic beverages on Sunday has no effect on sales of mixed drinks in hotels and restaurants as authorized by § 3-9-215 or § 3-9-216 or any other on-premises consumption permitted outlet.

(c) Notwithstanding the authority granted to counties and cities in this section, wholesale distributors of intoxicating alcoholic liquor may not sell or deliver any alcoholic beverages to retailers on a Sunday.

History. Acts 1943, No. 218, § 1; 1959, No. 56, § 1; A.S.A. 1947, § 48-901; Acts 1989, No. 426, § 1; 1999, No. 857, § 1; 2005, No. 1994, § 367; 2007, No. 1017, § 1; 2009, No. 294, § 2; 2009, No. 763, § 1.

Amendments. The 2009 amendment

by No. 294, in (a), substituted “subdivision (a)(3) of this section” for “3-9-401 et seq.” in (a)(1), and inserted (a)(3); rewrote (b); and made minor stylistic changes.

The 2009 amendment by No. 763 inserted (a)(4) through (a)(6).

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas's Response to *Granholm v. Heald*: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

3-3-216. Possession or sale of untaxed intoxicating liquor.

(a) As used in this section, “intoxicating liquor” means any beverage containing more than five-tenths percent (0.5%) of alcohol by weight.

(b) It is unlawful for a person to buy, bargain, sell, loan, own, have in possession, or knowingly transport in this state an intoxicating liquor upon which the Arkansas excise tax prescribed by law has not been paid.

(c)(1) Except as provided in subdivision (c)(2) of this section, a violation of this section is a Class B misdemeanor.

(2) A violation of this section is a Class A misdemeanor if a person transports intoxicating liquor into this state from another state without the Arkansas excise tax having been paid on the intoxicating liquor and the person was transporting the intoxicating liquor for the purpose of resale in this state.

(d)(1) In addition to the applicable criminal penalties under subsection (c) of this section, a person who violates this section is subject to a civil penalty equal to the amount of all excise tax levied on the intoxicating liquor at the rates imposed on alcoholic beverages under § 3-7-101 et seq.

(2) The Department of Finance and Administration shall assess and administer the civil penalty set forth in this subsection under the Arkansas Tax Procedure Act, § 26-18-101 et seq., and shall promulgate any rules necessary for the proper administration and enforcement of the civil penalty.

History. Acts 1941, No. 357, § 4; 1943, No. 219, § 1; 1947, No. 206, § 1; 1969, No. 475, § 1; A.S.A. 1947, § 48-934; Acts 1987, No. 965, § 1; 2005, No. 1994, § 369; 2007, No. 666, § 1; 2009, No. 548, § 1.

Amendments. The 2009 amendment inserted the introductory language of (a), redesignated the remainder of (a) as (b), and deleted “of any kind, as defined in § 3-8-201” following “liquor” in (b); in (c), inserted (c)(2) and rewrote and redesignated the remaining text; inserted (d)(1)

and redesignated the remaining text; deleted former (d), which read: “However, it shall constitute a Class A misdemeanor for any person to transport intoxicating liquor of any kind, as defined in § 3-8-201, from another state without the Arkansas excise tax having been paid on the intoxicating liquor if the court determines that the defendant was transporting the liquor of any kind for the purpose of resale”; and made related and minor stylistic changes.

3-3-219. Social hosts — Criminal liability.

(a)(1) A person who exercises control over private property shall not knowingly allow a person under twenty-one (21) years of age who is not a family member of the person to consume alcohol on the private property.

(2) This subsection applies only to a person who is present and in control of the private property at the time the consumption occurs.

(3) This subsection does not apply to the owner of rental property or the agent of an owner of rental property unless the consumption occurs in the individual unit in which the owner or agent resides.

(4) This subsection does not apply to any consumption of alcohol during religious ceremonies or for religious purposes.

(b)(1) A first violation of this section is a Class C misdemeanor.

(2) A second violation of this section is a Class A misdemeanor.

(3) A third or subsequent violation of this section is a Class D felony.

(c) This section shall not prevent a township, city, or county from establishing by ordinance regulations more stringent than the provisions of this section.

History. Acts 2009, No. 976, § 1.

CHAPTER 4

ALCOHOLIC BEVERAGES GENERALLY — PERMITS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ISSUANCE AND TERMS.
3. REVOCATION.
4. VIOLATIONS.
6. PARTICULAR PERMITS.
7. POST EXCHANGE PACKAGE PERMIT.
9. CATERER'S PERMIT.
10. RESTAURANT BEER AND WINE PERMIT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 3-4-105. Temporary permits.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional rev-

enues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-105. Temporary permits.

(a)(1) The Alcoholic Beverage Control Division may issue a temporary permit for the sale of alcoholic beverages within categories set out in subsection (b) of this section at a function sponsored by or for the benefit of a nonprofit organization or charitable organization.

(2) A temporary permit issued under this subsection may be issued for a period of time not to exceed five (5) consecutive days.

(3) An application for a temporary permit issued under this subsection shall meet the requirements as established by the Director of the Alcoholic Beverage Control Division and set out in the application.

(b)(1) The categories and application fees for temporary permits issued under subsection (a) of this section are as follows:

(A) Temporary beer permit — Fifty dollars (\$50.00) for each event for a temporary permit allowing the sale of beer;

(B) Temporary wine permit — Fifty dollars (\$50.00) for each event for a temporary permit allowing the sale of wine; and

(C) Temporary spirit permit — Fifty dollars (\$50.00) for each event for a temporary permit allowing the sale of spirituous alcoholic beverages.

(2) A temporary permit issued under subsection (a) of this section is only for on-premises consumption at the event specified in the temporary permit.

(c) An applicant may apply for one (1) or more of the temporary permits authorized in subsection (a) of this section for an event.

History. Acts 2009, No. 294, § 3.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased

or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

SUBCHAPTER 2 — ISSUANCE AND TERMS

SECTION.

3-4-201. Number of permits restricted.

3-4-204. [Repealed.]

3-4-205. Interest in other permits prohibited — Exceptions.

3-4-209. Applications — Contents.

SECTION.

3-4-210. Applications — Notice requirements.

3-4-218. Permits restricted to permitted premises.

3-4-221. Transfer of permitted location.

Effective Dates. Acts 2011, No. 70, § 4: Feb. 18, 2011. Emergency clause provided: "It is found and determined by the

General Assembly of the State of Arkansas that this act is necessary to prevent unfair competition; that this act is also

necessary to ensure that those persons receiving retail liquor permits continue to abide by the spirit and intent of the law; and that this act is immediately necessary to ensure that, through the permitting process, citizens are protected from the illegal sale of alcoholic beverages. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-201. Number of permits restricted.

(a) The public policy of the state is to restrict the number of permits in this state to dispense vinous (except small farm wines), spirituous, or malt liquor.

(b)(1) The Alcoholic Beverage Control Board shall determine whether public convenience and advantage will be promoted by issuing a permit and by increasing or decreasing the number of permits it issues.

(2) The number of permits issued by the board shall be restricted.

(c) The board has the discretion to determine the number of permits to be granted in each county of this state or within the corporate limits of any municipality of this state and to determine the location and the persons to whom the permits shall be issued, under the following conditions:

(1)(A) The number of permits allowing the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor in a county or political subdivision of the county which permits the sale shall not exceed a ratio of one (1) permit for every five thousand (5,000) population residing in that county or political subdivision of the county.

(B) Population of the county or political subdivision of the county shall:

(i) Be determined according to the most recent federal decennial census; and

(ii) Count all residents of the county or political subdivision of the county, including without limitation the residents of a dry political subdivision of a county; and

(2) A new permit that is issued in a county or political subdivision following the most recent federal decennial census shall be issued under the following restrictions:

(A) Additional permits may be issued on a ratio of one (1) for every additional five thousand (5,000) population within the county or political subdivision of the county;

(B)(i) A qualified applicant may apply for a permit.

(ii) Qualifications are to be set by the board and its determination of the public convenience and advantage;

(3)(A) If it is determined that a county or political subdivision of the county is entitled to additional permits when warranted by the most recent federal decennial census, the board will announce before the last date for applications the number of new permits, if any, which may be issued in the county or political subdivision of the county.

(B) In the event that the most recent federal decennial census population figures decline in a county or political subdivision of the county:

(i) Existing permits shall not be cancelled or revoked for the decline in population;

(ii) The quota ratio shall not be applied to the county or political subdivision of the county until the population in the county or political subdivision of the county reaches a number equaling one (1) permit to every five thousand (5,000) population; and

(iii) A new permit shall not be issued in the county or political subdivision of the county until the population warrants.

(C) A transfer of locations from one county to another county is not allowed.

(D) If a holder of a permit for the sale of vinous (except small farm wines), spirituous, or malt liquor surrenders the permit in a county or political subdivision of the county where the ratio no longer meets the one-to-five-thousand-population requirement, new applications will not be accepted until that ratio is reestablished at a subsequent federal decennial census;

(4)(A)(i) If a permit holder does not conduct business under a permit issued for a period of more than thirty (30) days, the permit shall be surrendered to the Director of the Alcoholic Beverage Control Division and shall be placed on inactive status.

(ii) The permit may remain inactive for six (6) months or until the permit holder notifies the director that he or she is ready to resume business, whichever is longer.

(B) To secure the return of the permit, the permit holder shall file with the director a written statement showing:

(i) That all taxes and fees owing to the state have been paid;

(ii) The reason for the suspension of business activities; and

(iii) The date business activity will resume.

(C)(i) The permit holder may petition the board for an extension of inactive status for an additional six-month period.

(ii) The board may grant an initial extension upon a showing by the permit holder and a finding by the board that:

(a) Business circumstances exist to justify an extension;

(b) The delay to return to business was not due to mere deferral or inattention on the part of the permit holder; and

(c) The inactive status should be extended.

(iii)(a) The permit holder may appeal to the board for a second extension of inactive status for an additional six-month period, but only upon a showing by the permit holder and a finding by the board that emergency circumstances exist to justify a final extension.

(b) "Emergency circumstances" are those delays in return to business which are beyond the control, planning, or foresight of the permit holder, including without limitation, a:

- (1) Delay due to a natural disaster;
- (2) Pending court action;
- (3) Building construction problem; and
- (4) Contested insurance claim.

(D) A permit remaining on inactive status for a period of more than eighteen (18) months or which has not been granted an extension under this subdivision shall expire; and

(5)(A) This section and §§ 3-4-202 and 3-4-208, except a permit on inactive status for more than eighteen (18) months after the provisions of subdivision (c)(4) of this section become effective or which has expired in accordance with subdivision (c)(4) of this section, do not divest any permit holder holding the permit on July 1, 1991, regardless of the quota ratio, of his or her permit.

(B) In a county or political subdivision of the county which has a ratio lower than the permit quota ratio of one-to-five-thousand-population, the permit holder shall be allowed to continue under subdivision (a)(3)(B) of this section.

(d) This section shall apply only to applications for permits to dispense vinous (except small farm wines), spirituous, or malt liquor filed with the board after July 1, 1991.

History. Acts 1935, No. 108, Art. 3, § 1; 1937, No. 80, § 1; Pope's Dig., § 14106; Acts 1955, No. 360, § 1; 1983, No. 812, § 1; A.S.A. 1947, § 48-301; Acts 1991, No. 714, § 1; 1991, No. 1179, § 1; 1993, No. 779, § 2; 2013, No. 1068, § 1.

Amendments. The 2013 amendment, in (a), deleted "It is declared to be" preced-

ing "The public", substituted "is to restrict" for "that", inserted "small farm" preceding "wines", and deleted "shall be restricted" following "liquor"; rewrote (b) and (c); and in (d), deleted "The provisions of" preceding "This section" and inserted "small farm" preceding "wines."

3-4-204. [Repealed.]

Publisher's Notes. This section, concerning when permits may not be issued, was repealed by Acts 2013, No. 527, § 3.

The section was derived from Acts 1967, No. 336, § 1; A.S.A. 1947, § 48-310.1.

3-4-205. Interest in other permits prohibited — Exceptions.

(a) For purposes of this section, the term "vested permits" is defined as those multiple retail liquor permits which were lawfully issued to any person, firm, or corporation prior to July 19, 1971.

(b)(1)(A) No retail liquor permit shall be issued, either as a new permit or as a replacement of an existing permit, to any person, firm, or corporation if the person, firm, or corporation has any interest in another retail liquor permit, regardless of the degree of interest.

(B) A retail liquor permit shall apply only to one (1) location, and a person, firm, or corporation shall not be permitted to receive any

direct or indirect financial benefit from the sale of liquor at any location other than the permitted location.

(2) However, notwithstanding this prohibition, any retail liquor permits held by any person, firm, or corporation on July 19, 1971, which continue to be held by any person, firm, or corporation having an interest in more than one (1) retail liquor permit on August 13, 1993, shall be vested permits.

(c)(1) Holders of vested permits may not sell, convey, assign, or devise any such interest in multiple retail liquor permitted businesses to any person or persons, firm, or corporation which, on the date of any such transfer, already has any ownership interest in a permitted retail liquor business.

(2) However, holders of vested permits shall be allowed to sell, convey, assign, or devise any such interest in multiple retail liquor permitted businesses to any other person or persons, firm, or corporation, thereby creating an ownership interest in more than one (1) retail liquor permit to any such subsequent purchasers, assignees, or devisees without violating any of the provisions hereinabove.

History. Acts 1971, No. 106, § 2; A.S.A. 1947, § 48-310.2; Acts 1993, No. 433, § 1; 2011, No. 70, § 1.

Amendments. The 2011 amendment added (b)(1)(B); and deleted "such" preceding "retail liquor permit" in (b)(2).

3-4-209. Applications — Contents.

In addition to such other information as the Director of the Alcoholic Beverage Control Division may determine shall be furnished in any application for permits under this act, the following information shall be given under oath:

(1) The name, age, and residence of each applicant and, if there are more than one (1) and they are partners, the partnership name and residence of the several persons so applying and the facts as to his or her or their citizenship;

(2) The name and residence of each person interested, or to become interested, in the business of any permittee for which the application is made, together with the nature of the interests. If the applicant is a corporation, the application shall set forth the name of the corporation, the names of its directors or other governing body, the name of its president, and the state under the laws of which it is organized;

(3) That the premises to be permitted is identified by stating the street and number, if the premises has a street and number, and otherwise such apt description as will reasonably indicate the locality. The applicant shall also state the name of any other person, either as principal or associate, interested with the applicant either in the premises or in the business to be permitted;

(4) A statement that the applicant has not been convicted of a felony and has not had a permit issued to him, her, or them under this act revoked for cause within five (5) years preceding the date of application.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; A.S.A. 1947, § 48-311; Acts 1991, No. 606, § 2; 2013, No. 325, § 2.

Amendments. The 2013 amendment substituted "president" for "officers" in the second sentence of (2).

3-4-210. Applications — Notice requirements.

(a)(1)(A) After filing an application with the Director of the Alcoholic Beverage Control Division and the acceptance of the application by the director, the applicant shall publish at least one (1) time a week for four (4) consecutive weeks in a legal newspaper of general circulation in the city or locality where the business is to be located a notice that the applicant has applied for a permit to sell alcoholic beverages at retail.

(B) The newspaper publishing the notice shall have a physical address within the county of the proposed location of the retail business identified in the application.

(C) If the county does not have a newspaper, then the publication shall be placed in a newspaper with the nearest physical address of the location of the retail business identified in the application.

(2) The notice shall be in such form as the director shall prescribe by rule or order and shall be verified.

(3) The notice shall give the names of the applicant and the business and shall state that the applicant is a resident of Arkansas, a citizen or resident alien of the United States, that he or she has good moral character, that he or she has never been convicted of a felony or had a license to sell alcoholic beverages revoked within the five (5) years preceding the date of notice, whether issued by this state or any other state, and that he or she has not been convicted of violating laws of this state or any other state governing the sale of alcoholic beverages within five (5) years preceding the date of the notice.

(b)(1) Within five (5) days after filing an application for a permit to sell alcoholic beverages at retail at any premises, a notice of the application shall be posted in a conspicuous place at the entrance to the premises.

(2) The applicant shall notify the director of the date when notice is first posted.

(3) No permit shall be issued to any applicant until proper notice has been posted on the premises for at least thirty (30) consecutive days.

(4)(A) The notice shall be in such form as the director shall prescribe by rule or order.

(B) The notice shall be:

(i) At least eleven inches (11") in width and seventeen inches (17") in height; and

(ii) Printed in black lettering on a yellow background.

(c)(1) Upon receipt by the director of an application for a permit, written notice thereof, which shall include a copy of the application, the application shall immediately be mailed by the director to the sheriff,

chief of police, if located within a city, and prosecuting attorney of the locality in which the premises are situated, and to the city board of directors or other governing body of the city in which the premises are situated, if within an incorporated area.

(2) No license shall be issued by the director until at least thirty (30) days have passed from the mailing by the director of the notices required by this section.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; A.S.A. 1947, § 48-311; Acts 1989, No. 297, § 2; 1991, No. 606, § 3; 1995, No. 652, § 11; 2007, No. 735, § 1; 2013, No. 292, § 1.

Amendments. The 2013 amendment redesignated former (a)(1) as (a)(1)(A); re-wrote (a)(1)(A); and added (a)(1)(B) and (a)(1)(C).

3-4-218. Permits restricted to permitted premises.

(a)(1) No new liquor permits shall be issued to nor shall any outstanding liquor permit be transferred to any person, firm, or corporation by the Alcoholic Beverage Control Division wherein the permitted premises of the liquor permittee is operated as a part of the profit-making business of any drug, grocery, sporting goods, dry goods, hardware, or general mercantile store.

(2) However, the permittee may have tobacco products, mixers, soft drinks, and other items customarily associated with the retail package sale of the liquors.

(b) However, this restriction shall not prohibit the transfer of a permit by the division resulting from the sale of a business for which a permit was issued on or before February 18, 1971.

(c) It is further provided that in any instance where a retail liquor permit was issued after February 18, 1971, and the permitted premise is located outside an incorporated city or town and is located within five (5) miles of two (2) other liquor stores that were grandfathered in under the provisions of subsection (b) of this section, with each of the other stores being on either side of the newer liquor store, further where the newer liquor store and one (1) of the grandfathered liquor stores are both located in the same county and the second grandfathered liquor store is located in an adjoining county, and further where all three (3) subject liquor stores are located within one (1) mile of a federal interstate highway, then the middle liquor store may be considered as a grandfathered liquor store on the same basis as its competitors and may sell items which would not ordinarily be allowed if the permit were granted after February 18, 1971.

(d) The holder of a retail liquor permit, as defined in § 3-4-604, which is located in any city having a population of less than six hundred (600) persons and in a county having a population of less than sixteen thousand (16,000) persons according to the 2000 Federal Decennial Census and within three (3) miles of a river that serves as a common boundary between that county and another state shall be entitled, in

addition to other privileges inherent under the permit, to sell food prepared on the licensed premises for off-premises consumption.

(e)(1) A retail liquor permit issued under this subchapter is restricted to the location identified in the application required under § 3-4-209(3).

(2) A retail liquor permit shall not be used for multiple locations.

History. Acts 1971, No. 106, § 3; 1977, No. 798, § 1; A.S.A. 1947, § 48-310.3; Acts 1999, No. 1594, § 1; 2003, No. 848, § 1; 2007, No. 457, § 1; 2011, No. 70, § 2.

Amendments. The 2011 amendment added (e).

CASE NOTES

Transfer of License.

Trial court properly upheld a decision granting an applicant's request to transfer a retail liquor license from another business to the applicant's location because the applicant's sales would be limited to the separate premises of its store,

even though it was a subsidiary of an adjoining warehouse club; the application of subdivision (a)(1) of this section was not clearly wrong. Ark. Bev. Retailers Ass'n v. Langley, 2009 Ark. 187, 305 S.W.3d 427 (2009).

3-4-221. Transfer of permitted location.

The Alcoholic Beverage Control Board shall not authorize the transfer of a permit to dispense vinous (except small farm wines), spirituous, or malt liquor from a location to another location within a city or town located within a county having a population of two hundred thousand (200,000) or more persons, according to the most recent federal decennial census, if the transfer of such permit to a location in the city or town will result in there being more than one (1) permitted location in the city or town for each five thousand (5,000) population in the city or town, according to the most recent federal decennial census.

History. Acts 1995, No. 861, § 1; 2013, No. 1068, § 2.

Amendments. The 2013 amendment inserted "small farm" preceding "wines",

substituted "a location to another location" for "any location to a location", and "five thousand (5,000)" for "four thousand (4,000)".

SUBCHAPTER 3 — REVOCATION

SECTION.

3-4-301. Grounds for revocation.

Effective Dates. Acts 2011, No. 70, § 4: Feb. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act is necessary to prevent unfair competition; that this act is also necessary to ensure that those persons receiving retail liquor permits continue to

abide by the spirit and intent of the law; and that this act is immediately necessary to ensure that, through the permitting process, citizens are protected from the illegal sale of alcoholic beverages. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-301. Grounds for revocation.

- (a) Any permit issued pursuant to this act may be revoked for cause and must be revoked for the following causes:
- (1) Conviction of the permittee or his or her agent or employee for selling any illegal beverages on the premises permitted;
 - (2) For making any false material statement in an application for a permit;
 - (3) If, within a period of two (2) years, there shall have been two (2) convictions for any violation of this act by a permittee, or two (2) convictions of any of his or her clerks, agents, employees, or servants of any violation of this act on the premises permitted;
 - (4) For transferring, assigning, or hypothecating a permit;
 - (5) Violating the provisions of § 3-1-103(c) which shall cause a forfeiture of the permit of all parties to the violation;
 - (6) For selling or agreeing to sell any spirituous, vinous, or malt liquors to a wholesaler, rectifier, or dispensary who is not permitted at the time of the agreement and sale to receive, store, transport, sell, and dispense same under the provisions of this act;
 - (7) For failure or default of a permittee to pay any license or permit tax or any part thereof or penalties imposed by this act and for a violation of any rule or regulation of the Director of the Department of Finance and Administration or the Director of the Alcoholic Beverage Control Division in pursuance thereof;
 - (8) Subsequent to March 1, 2011, if a retail liquor permittee directly or indirectly remunerates any person, firm, or corporation that has a direct or indirect pecuniary, proprietary, or financial interest in the creation, establishment, operation, or contractual branding of another permitted liquor establishment;
 - (9) Subsequent to March 1, 2011, if a retail liquor permittee directly or indirectly receives remuneration from any other retail liquor permittee relating to the creation, establishment, operation, or contractual branding of another permitted liquor establishment; or
 - (10) Subsequent to March 1, 2011, if a retail liquor permittee brands the permitted location with the same name or logo as another retail liquor permittee.
- (b)(1) Whenever any person holding a retailer's permit to sell and dispense vinous or spirituous liquors for beverage purposes at retail shall fail to pay any Arkansas gross receipts tax, franchise tax, or the three percent (3%) special alcoholic beverage excise tax within sixty (60) days after the taxes become due, the Director of the Department of

Finance and Administration shall notify the Alcoholic Beverage Control Board of that fact and the board shall immediately revoke such permit.

(2) It shall be unlawful for the board or any person to restore or issue a retailer's permit to any person whose permit has been revoked under the provisions of this subsection within two (2) years from the date of the revocation.

History. Acts 1935, No. 108, Art. 3, § 13; Pope's Dig., § 14117; Acts 1969, No. 221, § 1; A.S.A. 1947, §§ 48-316, 48-316.1; Acts 2011, No. 70, § 3.

Amendments. The 2011 amendment added (a)(8)–(10).

SUBCHAPTER 4 — VIOLATIONS

SECTION.

3-4-403. Class A violations.

3-4-404. Class B violations.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-403. Class A violations.

The following acts on the part of any permittee are Class A permit violations:

- (1) Failure to furnish access to premises by any law enforcement officer or any authorized Alcoholic Beverage Control Division personnel or failure to cooperate or take reasonable action to assist any such law enforcement officers or authorized division personnel who are on the permitted premises in the performance of their duties;
- (2) Failure to allow inspection of books or records;
- (3) Posting permit on unauthorized premises;
- (4) Manufacture or possession of controlled beverage with excess alcoholic content;
- (5) Sale by a manufacturer to other than a wholesaler. Provided, sales authorized by any law of the state relating to native wines shall not constitute a violation;
- (6) Sale by a wholesaler to other than a retailer;
- (7) Ownership or other interest in retail outlet by a manufacturer or a wholesaler. Provided, that such ownership or other interest authorized by any law of this state relating to native wines shall not be a violation;
- (8) Unauthorized gift or service to retailers by a manufacturer or a wholesaler;
- (9) Use of post-dated checks for payment of controlled beverages and merchandise;
- (10) Wholesaler making delivery to a consumer;
- (11) The permittee possessed or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises any illegal drug or narcotic or controlled substance or that any agent or employee while acting on the permittee's behalf knowingly allowed the possession on the permitted premises of any illegal drug or narcotic or controlled substance;
- (12) Selling or allowing the consumption of alcoholic beverages on the permitted premises when the permit is suspended or on inactive status;
- (13) Selling to minors;
- (14) Unauthorized employment of a minor;
- (15)(A) Disorderly conduct or a breach of the peace by a patron or employee on the permitted premises.
(B) As used in subdivision (15)(A) of this section, "disorderly conduct" includes without limitation a fight, brawl, or disturbance that results in bodily injury to a person on the permitted premises;
- (16) Violation of § 3-3-218;
- (17) Selling to an intoxicated person;
- (18) Unauthorized manufacturing, selling, offering, dispensing, or giving away of controlled beverages;
- (19)(A) Conducting or permitting gambling on premises.
(B) Conducting or permitting gambling under subdivision (19)(A) of this section does not include:

- (i) Charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.; or
 - (ii) A lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.;
- (20) Violation of legal closing hours; and
- (21)(A) Possession of a weapon on the permitted premises by a person without a possessory or proprietary interest in the permitted premises.
- (B) When the permitted premises is a retail liquor store that sells alcoholic beverages for off-premises consumption, an employee of the retail liquor store that is licensed to carry a concealed handgun by the state may possess a handgun on the permitted premises if the possession of the handgun is permitted under state law.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 1; 1993, No. 172, § 2; 2009, No. 294, § 4; 2009, No. 605, § 9; 2009, No. 606, § 9; 2013, No. 760, § 1.

A.C.R.C. Notes. Acts 2009, Nos. 605 and 606, § 9, amended § 3-4-404(21) to add exemptions to the Class B violation of conducting or permitting gambling on premises for charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-01 et seq. and a lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq. How-

ever, Acts 2009, No. 294 §§ 4 and 5, transferred the gambling violation from § 3-4-404 to § 3-4-403(19) and made it a Class A violation. As a result, Acts 2009, Nos. 605 and 606, § 9, are codified as § 3-4-403(19)(B).

Amendments. The 2009 amendment by No. 294 added (13) through (21) and made related changes.

The 2009 amendment by identical acts Nos. 605 and 606 inserted (19)(B).

The 2013 amendment added (21)(B) and the (A) designation.

3-4-404. Class B violations.

The following acts on the part of the permittee are Class B violations:

- (1) Pledge, hypothecation, or use of a permit as collateral;
- (2) Defacing, destroying, or altering a permit;
- (3) Transporting controlled beverages in violation of regulations or law;
- (4) Manufacturing, selling, offering, dispensing, or giving away, possessing, or transporting controlled beverages upon which tax is not paid;
- (5) Failure to maintain proper records by a manufacturer;
- (6) Failure by a wholesaler to maintain proper records;
- (7) Failure by a wholesaler to register new brands;
- (8) Giving samples without authorization;
- (9) Sales for anything other than cash or check;
- (10) Delivery without an invoice by a wholesaler;
- (11) Selling to the insane;
- (12) Selling to bootleggers;
- (13) Accepting food stamps in payment for controlled beverages;
- (14) Unlawful manufacture or sale in a dry area; and
- (15) Sale of controlled beverages by vending machine.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 2; 1993, No. 172, § 3; 2009, No. 294, § 5; 2009, No. 605, § 9; 2009, No. 606, § 9.

A.C.R.C. Notes. Acts 2009, Nos. 605 and 606, § 9, amended § 3-4-404(21) to add exemptions to the Class B violation of conducting or permitting gambling on premises for charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-01 et seq. and a lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq. However, Acts 2009, No. 294 §§ 4 and 5, trans-

ferred the gambling violation from § 3-4-404 to § 3-4-403(19) and made it a Class A violation. As a result, Acts 2009, Nos. 605 and 606, § 9, are codified as § 3-4-403(19)(B).

Amendments. The 2009 amendment by No. 294 deleted (11), (15) through (19), (21), (22), and (24), redesignated the remaining subdivisions accordingly, and made related changes.

The 2009 amendment by identical acts Nos. 605 and 606 inserted (21)(B), redesignated the remaining text accordingly, and made a related change.

SUBCHAPTER 6 — PARTICULAR PERMITS

SECTION.

- 3-4-602. Distillers or manufacturers.
- 3-4-605. Wholesalers.
- 3-4-607. Minimum wholesale liquor permit.
- 3-4-608. Spirituous liquor — Vinous li-

SECTION.

- quor — Supplier registration.
- 3-4-609. Wholesaler permit — Issuance — Transfer.

A.C.R.C. Notes. Acts 2009, No. 763, § 2, created a new § 3-4-608. However, pursuant to § 1-2-303, the Arkansas Code Revision Commission reassigned Acts 2009, No. 763, § 2, to § 3-9-239.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1105, § 4: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a supplier of an alcoholic beverage is not required to file an application with the Alcoholic Beverage Control Division each calendar year; that suppliers should be required to register with the division each calendar year; and that the division's yearly registration period begins on April 1. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-602. Distillers or manufacturers.

(a) Any person may apply to the Director of the Alcoholic Beverage Control Division for a permit to manufacture, distill, import, transport, store, and sell to a wholesaler, jobber, or distributor spirituous, vinous (except wines), or malt liquors to be used and sold for beverage purposes.

(b) The application shall be in writing and verified and shall set forth in detail such information concerning the applicant for the permit and the premises to be used therefor as the director shall require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director shall grant the application, he or she shall issue a permit in such form as shall be determined by rules and regulations established by the director.

(e) The permit shall contain a description of the premises to be used by the applicant and in form and in substance shall be a permit to the person therein specifically designated to manufacture, distill, transport, and sell to a wholesaler, jobber, or distributor spirituous, vinous, or malt liquors in or from the premises therein specifically authorized.

(f) No distiller or manufacturer shall sell or contract to sell any spirituous, vinous (except wines), or malt liquors referred to herein to any wholesaler, distributor, or jobber, or to any other person who is not duly authorized under this act to receive, possess, transport, distribute, or sell those liquors.

(g) Under rules adopted by the director, a distiller or manufacturer may:

- (1) Sell, deliver, or transport to wholesalers;
- (2) Sell, deliver, or transport to rectifiers;
- (3) Export out of the state; and

(4) Sell for off-premises consumption spirituous liquors the distiller or manufacturer manufactures on any day of the week.

(h)(1) For the privilege of distilling spirituous liquors or manufacturing malt liquors, there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of one thousand dollars (\$1,000) for each and every manufacturing or distilling plant.

(2) For the privilege of manufacturing vinous liquors (except wines), there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of five hundred dollars (\$500) for each and every manufacturing plant.

(3) However, for the privilege of distilling brandy or spirituous liquors for use only in the fortifying of native wines, which are wines manufactured from the juices of grapes, berries, and other fruits or vegetables grown in this state, there shall be collected an annual permit fee of two hundred fifty dollars (\$250) for each manufacturing or distilling plant.

History. Acts 1935, No. 108, Art. 3, § 3; 1935, No. 108, Art. 4, § 1; Pope's Dig., §§ 14107, 14127; Acts 1939, No. 302, § 1; 1983, No. 675, § 1; A.S.A. 1947, §§ 48-303, 48-321; Acts 2011, No. 827, § 1.

Amendments. The 2011 amendment rewrote (g).

3-4-605. Wholesalers.

(a) Any person other than a distiller, manufacturer, rectifier, or importer may apply to the Director of the Alcoholic Beverage Control Division for a permit to sell spirituous liquor, wine as defined in § 3-9-301(7), beer, or malt liquors at wholesale.

(b) The application shall be in writing and shall set forth in detail such information concerning the applicant for the permit and the premises to be used by the applicant as the director may require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director grants the application, he or she shall issue a permit in a form as determined by the rules of the Alcoholic Beverage Control Division.

(e) The permit shall contain a description of the premises permitted and in form and substance shall be a permit to the person specifically designated in the permit to sell spirituous liquor, wine as defined in § 3-9-301(7), beer, or malt liquors for beverage purposes.

(f) A person holding a distiller's or rectifier's permit need not obtain a wholesaler's permit in order to sell at wholesale spirituous liquor or wine as defined in § 3-9-301(7).

(g)(1)(A) A person other than a person holding a distiller's, manufacturer's, or rectifier's permit shall not sell spirituous liquor, wine as defined in § 3-9-301(7), or malt liquors at wholesale.

(B) A person other than a person holding a wholesaler's permit shall not sell spirituous liquor, wine as defined in § 3-9-301(7), or malt liquors at wholesale.

(2) A wholesaler holding a permit shall not sell or buy from another unless he or she holds a permit, but a wholesaler may export from or import into this state liquors under rules promulgated by the Alcoholic Beverage Control Division.

(h) A wholesaler shall not sell or contract to sell any spirituous liquor, wine as defined in § 3-9-301(7), beer, or malt liquors to a dispensary, hotel, restaurant, or club if the dispensary, hotel, restaurant, or club is not authorized under this act to receive, possess, transport, distribute, or sell spirituous liquor, wine as defined in § 3-9-301(7), beer, or malt liquors.

(i) Further, a licensed wholesaler of any spirituous liquor, beer, or wine as defined in § 3-9-301(7) in Arkansas may only purchase spirituous liquor, beer, or wine as defined in § 3-9-301(7) from a distiller, importer, rectifier, or a domestic wine producer. However, this restriction does not apply to the purchase of native wines.

(j)(1) For the privilege of storing, transporting, and selling spirituous liquor, wine as defined in § 3-9-301(7), beer, or malt liquors at whole-

sale, there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of seven hundred dollars (\$700) for each separate and distinct establishment.

(2) However, this section does not apply to residents of Arkansas who store, transport, and sell wine at wholesale manufactured by them in this state.

History. Acts 1935, No. 108, Art. 3, § 5; 1935, No. 108, Art. 4, § 3; Pope's Dig., §§ 14109, 14129; Acts 1973, No. 299, § 1; 1983, No. 675, § 3; A.S.A. 1947, §§ 48-305, 48-323; Acts 2009, No. 294, § 6.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment

inserted "liquor" following "spirituous" in (a), (e), (h), (i), and (j)(1); substituted "wine as defined in § 3-9-301(2)" for "vinous" in (e), (h), and (j)(1), for "vinous (except wines)" in (a) and (g)(1)(A), and for "vinous liquors" in (f) and (i); inserted "beer" in (a), (e), (h), (i), and (j)(1); inserted (g)(1)(B), redesignated (g) accordingly, and deleted "and regulations" following "rules" in (g)(2); and made minor stylistic changes.

3-4-607. Minimum wholesale liquor permit.

(a)(1) Any person other than a distiller, manufacturer, rectifier, or importer may apply to the Director of the Alcoholic Beverage Control Division for a minimum wholesale liquor permit that allows the person to sell spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors at wholesale.

(2) A minimum wholesale liquor permit holder shall not sell more than a combined total of twenty thousand (20,000) cases of spirituous liquors, wine as defined in § 3-9-301(7), or malt liquors.

(3) A case is a container that holds nine liters (9 l) of beverages.

(b) The application shall be in writing and shall provide information concerning the applicant for the minimum wholesale liquor permit and the premises to be used by the applicant as the director requires.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this section for the minimum wholesale liquor permit.

(d) If the director grants the application, he or she shall issue a minimum wholesale liquor permit in a form as determined by the rules of the Alcoholic Beverage Control Division.

(e) The minimum wholesale liquor permit shall contain a description of the premises permitted and in form and substance shall be a minimum wholesale liquor permit to the person specifically designated to sell spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors for beverage purposes.

(f)(1) A person other than a person holding a distiller's, manufacturer's, rectifier's, or minimum wholesale liquor permit shall not sell spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors at wholesale.

(2) A wholesaler holding a minimum wholesale liquor permit shall not sell or buy from another person unless the other person holds a

minimum wholesale liquor permit, but a wholesaler may export from or import into this state spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors under rules promulgated by the Alcoholic Beverage Control Division.

(g) A wholesaler holding a minimum wholesale liquor permit shall not sell or contract to sell any spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors to a dispensary, hotel, restaurant, or club if the dispensary, hotel, restaurant, or club is not authorized under § 3-4-601 to receive, possess, transport, distribute, or sell spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors.

(h) A minimum wholesale liquor permittee of any spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors in Arkansas shall purchase spirituous liquors, wine as defined in § 3-9-301(7), and malt liquors only from a distiller, importer, rectifier, or a domestic wine producer. However, this restriction does not apply to the purchase of native wines.

(i)(1) The minimum wholesale liquor permit fee is two thousand five hundred dollars (\$2,500) for each separate establishment.

(2) This section does not apply to residents of Arkansas who store, transport, and sell wine at wholesale manufactured by them in this state.

(j) The provisions of § 3-4-606 shall apply to a wholesaler who has a minimum wholesale liquor permit.

History. Acts 2009, No. 294, § 7.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased

or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

3-4-608. Spirituous liquor — Vinous liquor — Supplier registration.

(a) As used in this section:

(1) "Small farm wine" means the wine produced by a wine-making business that produces two hundred fifty thousand (250,000) gallons of wine or less per year, the alcohol content of which is not less than one-half percent (0.5%) and not more than twenty-one percent (21%);

(2) "Spirituous" means a liquor distilled from the fermented juices of grain, fruits, or vegetables and containing more than twenty-one percent (21%) alcohol by weight, or any other liquids containing more than twenty-one percent (21%) alcohol by weight;

(3) "Supplier" means an in-state or out-of-state manufacturer, distiller, rectifier, brewer, importer, or producer of spirituous liquor or vinous liquor; and

(4) "Vinous" means the fermented juices of fruits or a mixture containing the fermented juices of fruits, containing more than five percent (5%) and not more than twenty-one percent (21%) alcohol by weight.

(b)(1) A supplier of a spirituous or vinous beverage, excluding small farm wine, shall file an application with the Alcoholic Beverage Control Division for a permit.

(2) The application shall:

- (A) Be in writing;
- (B) Be verified; and

(C) Set forth the information in detail as the Director of the Alcoholic Beverage Control Division requires concerning the applicant for the permit and premises to be used.

(3) The application shall be accompanied by a permit fee of fifty dollars (\$50.00) payable by cash, check, money order, or electronic payment.

(4) The permit may be renewed annually.

(5) If the director grants the application, he or she shall issue a permit in the form required by the rules established by the division.

(c) A supplier shall not sell a spirituous liquor or a vinous liquor to a wholesaler, distributor, or to any other person who is not legally authorized to receive, possess, transport, distribute, or sell a spirituous liquor or a vinous liquor under this chapter.

(d) Under the rules adopted by the director, a supplier may:

- (1) Sell, deliver, or transport to a wholesaler, distributor, or rectifier;
- (2) Ship into the state to a wholesaler, distributor, or rectifier; and
- (3) Export out of the state.

History. Acts 2013, No. 1105, § 2.

3-4-609. Wholesaler permit — Issuance — Transfer.

(a)(1) A wholesaler permit shall not be issued under § 3-4-605 or § 3-4-607 on or after September 1, 2013.

(2) However, a holder of a wholesaler permit under § 3-4-605 or § 3-4-607 issued on or before September 1, 2013, may renew the permit before, on, or after September 1, 2013.

(b) A holder of a wholesaler permit issued under § 3-4-605 or § 3-4-607 on or before September 1, 2013, may transfer the wholesaler permit to another wholesaler as permitted under applicable law or regulation of the Alcoholic Beverage Control Division.

History. Acts 2013, No. 1434, § 1.

SUBCHAPTER 7 — POST EXCHANGE PACKAGE PERMIT

SECTION.

3-4-701. Creation — Issuance — Expiration.

SECTION.

3-4-706. Military service club mixed drink permit.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause pro-

vided: "It is found and determined by the General Assembly of the State of Arkan-

sas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. There-

fore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

3-4-701. Creation — Issuance — Expiration.

(a)(1) In addition to all other existing alcoholic beverage permits authorized to be issued by the Alcoholic Beverage Control Division for the retail sale of alcoholic beverages, there is hereby created a “post exchange package permit”, which shall authorize the sales of spirituous, vinous, and malt beverages, light wine, light beer, premixed spirituous liquor, light spirituous liquor, and Arkansas native wine, as such beverages are defined by this title, at post exchange facilities located at Camp Joseph T. Robinson and Fort Chaffee upon property owned or controlled by the State of Arkansas and operated by and under the exclusive control of the militia.

(2) The permit created herein shall not be subject to any quota restrictions.

(b) The permits authorized in this section shall be issued by the Alcoholic Beverage Control Division to qualified persons whose application for the permit shall be accompanied by a letter of authorization signed by the Adjutant General for the State of Arkansas.

(c) Each permit shall be issued annually for a fee of one thousand dollars (\$1,000) and shall expire on June 30 of each year.

History. Acts 1989, No. 617, §§ 1-3; 1997, No. 366, § 1; 2009, No. 294, § 8.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: “The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period.”

Amendments. The 2009 amendment, in (c), substituted “one thousand dollars (\$1,000)” for “one hundred dollars (\$100)” and made a minor stylistic change.

3-4-706. Military service club mixed drink permit.

(a) In addition to the post exchange and other post operations authorized to be taken over by the militia pursuant to the provisions of this section, the Adjutant General is given further authority to take over operation of all military service clubs on Fort Chaffee.

(b)(1) It is recognized that Fort Chaffee has operated under exclusive federal jurisdiction and that such military service clubs have not been

required to obtain a license from the State of Arkansas to authorize such operations.

(2) However, pursuant to resumption of state jurisdiction over Fort Chaffee, state licenses will be required.

(c)(1) Therefore, there is hereby created a military service club mixed drink permit authorizing the sale of alcoholic beverages as defined in § 3-9-202 et seq. to be issued to service clubs on military reservations owned or controlled by the State of Arkansas.

(2) The Alcoholic Beverage Control Division is authorized to issue such a permit to each military service club operating on Fort Chaffee.

(3)(A) The annual fee for each military service club mixed drink permit shall be seven hundred fifty dollars (\$750), and the annual fee shall be due and collected in the same manner as all other permit fees collected by the division.

(B) Food service requirements for restaurants, as set out in § 3-9-202 et seq. shall not be applicable.

(C) Hours of operation for such service clubs shall be the same as are now in existence for private clubs licensed pursuant to § 3-9-221 et seq.

(4) The division is authorized to adopt reasonable rules and regulations to provide for the operation of such service clubs consistent with the intent and purposes of this section.

History. Acts 1997, No. 1201, § 15; 2009, No. 294, § 9.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment, in (c)(3)(A), substituted "seven hundred fifty dollars (\$750)" for "five hundred dollars (\$500)" and made minor stylistic changes.

SUBCHAPTER 9 — CATERER'S PERMIT

SECTION.

3-4-902. Off-premise caterer's permit.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address vio-

lations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-4-902. Off-premise caterer's permit.

(a) There is hereby created an off-premise caterer's permit which may be issued by the Alcoholic Beverage Control Division to qualified off-premise caterers as defined in this subchapter.

(b) The annual fee for an off-premises caterer's permit shall be five hundred dollars (\$500), and the off-premises caterer's permit shall be renewed on an annual basis.

(c) The off-premise caterer's permit shall be posted conspicuously at the caterer's place of business.

History. Acts 1999, No. 1170, § 2; 2009, No. 294, § 10.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment, in (b), substituted "five hundred dollars (\$500)" for "two hundred dollars (\$200)" and made minor stylistic changes.

SUBCHAPTER 10 — RESTAURANT BEER AND WINE PERMIT**SECTION.**

3-4-1001. Creation — Issuance — Expiration.

3-4-1002. Rules.

SECTION.

3-4-1003. Unauthorized sales — Penalties.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 763, § 6: Apr. 1, 2009. Emergency clause provided: "It is hereby found and determined that Act 294 of 2009 became effective, by emergency clause, on March 3, 2009, and that it has been found that there are some technical corrections that need to be placed into immediate operation. It is further determined that these technical corrections are necessary to give full force and effect to the provisions of Act 294 of 2009 and that if this technical corrections bill is not passed with an emergency clause then unnecessary confusion concerning the provisions of Act 294 of 2009 may arise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto."

3-4-1001. Creation — Issuance — Expiration.

(a)(1) In addition to all other existing alcoholic beverage permits authorized to be issued by the Alcoholic Beverage Control Division for the retail sale of alcoholic beverages, there is created a restaurant beer and wine permit, which authorizes the sale of beer and wine as defined in § 3-9-301(7) at restaurants as defined in § 3-9-301(6).

(2) The restaurant beer and wine permit is not subject to any quota restrictions.

(b) The permit may be issued by the Alcoholic Beverage Control Division to a qualified person.

(c) Each restaurant beer and wine permit shall be issued annually for a fee of three hundred and fifty dollars (\$350) and shall expire on June 30 of each year.

History. Acts 2009, No. 294, § 11; 2009, No. 763, § 3.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment deleted "light" preceding "beer" in (a)(1), and made minor stylistic and punctuation changes.

3-4-1002. Rules.

The Alcoholic Beverage Control Division may adopt rules to carry out this subchapter, to establish appropriate application forms, permit forms, and procedures, and to do all other things necessary to implement this subchapter.

History. Acts 2009, No. 294, § 11.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased

or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

3-4-1003. Unauthorized sales — Penalties.

An unauthorized sale under the restaurant beer and wine permit created in this subchapter is subject to the same penalties as established for other on-premises retail permits pursuant to this title.

History. Acts 2009, No. 294, § 11.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased

or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

CHAPTER 5

BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BEER AND LIGHT WINE.
3. BEER — LICENSING OF RETAILERS.
9. NATIVE WINES — INCENTIVE GRANTS.
11. BEER — WHOLESALERS AND SUPPLIERS.
12. MICROBREWERY — RESTAURANTS.
13. NONRESIDENT BEER SELLER'S PERMITS.
14. ARKANSAS NATIVE BREWERY ACT.
16. FREE TRADE AMONG SMALL WINERIES.
17. DIRECT SHIPMENT OF VINOUS LIQUOR ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-5-101. Wholesaler of beer and light wine may sell malt liquor.
3-5-104. Wine tasting events.

SECTION.

3-5-105. Beer festival permit.
3-5-107. Unlawful pricing by brewers and manufacturers.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address vio-

lations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-101. Wholesaler of beer and light wine may sell malt liquor.

A person, firm, or corporation having a permit to sell beer and light wine at wholesale shall be permitted to sell to liquor retailers malt liquor containing greater than five percent (5%) of alcohol by weight.

History. Acts 1965, No. 165, § 1; A.S.A. 1947, § 48-504.3; Acts 2013, No. 527, § 4.

Amendments. The 2013 amendment

rewrote the section catchline and the section.

3-5-104. Wine tasting events.

(a)(1) Native wineries and licensed wine and spirits wholesalers, upon prior approval by the Alcoholic Beverage Control Division, shall be allowed to conduct wine tasting events for educational and promotional purposes at any location in this state without obtaining a wine sampling permit under this section if written notice is given to the division at least ten (10) days prior to the event.

(2) Requests for approval to conduct wine tasting events must be received by the division at least ten (10) days prior to the event.

(b)(1) A person, other than a native winery, licensed to sell wine, beer, or spirits under a retail liquor permit as defined in § 3-4-604 may conduct tasting events for educational and promotional purposes on the person's premises after obtaining a sampling permit from the division as provided in subsection (f) of this section.

(2)(A) Wine, beer, or spirits purchased by the person permitted under this section to conduct a tasting event shall not be exempt from the gross receipts and use taxes.

(B) If the person removes wine, beer, or spirits from his or her inventory for use in a tasting event, the wine, beer, or spirits shall be subject to the gross receipts taxes as a withdrawal from stock.

(3) A wholesaler may not:

(A) Offer special discounts on wine, beer, or spirits sold for the purpose of a tasting event; or

(B) Provide wine, beer, or spirits without charge to a person licensed to sell wine at retail for the purpose of a tasting event.

(c) No tasting event may be held pursuant to this section in any facility licensed by the division.

(d) No motor vehicle in which supplies for tasting events are carried and no person shall be subject to arrest nor shall the supplies be subject to seizure for over possession in a dry area.

(e) The criminal penalties for drinking in public as prescribed by § 5-71-212(c) are not applicable to any tasting event approved by the division pursuant to this section.

(f)(1) The Director of the Alcoholic Beverage Control Division may issue a sampling permit if the applicant:

(A) Is licensed by the director to sell wine, beer, spirits, or any combination, at retail; and

(B) Pays a license fee of:

(i) Five hundred dollars (\$500) for either a wine license, beer license, or spirits license; or

(ii) One thousand dollars (\$1,000) for a combined wine, beer, and spirits license.

(2)(A) The sampling permit allows the person to conduct tasting events on the person's premises during regular hours of operation. A sampling permit shall expire on June 30 of each year.

(B) The samples shall be limited to a total of:

(i) Three (3) one-half ounce (0.5 oz.) wine servings per customer each day for on-premises consumption;

- (ii) Two (2) two ounce (2 oz.) beer servings per customer each day for on-premises consumption; and
 - (iii) Two (2) one-half ounce (0.5 oz.) spirit servings per customer each day for on-premises consumption.
- (3) The director may promulgate rules to administer and enforce this section.

History. Acts 1993, No. 1258, §§ 1-4; 2005, No. 1544, § 1; 2007, No. 455, § 1; 2009, No. 548, § 2.

Amendments. The 2009 amendment deleted "wine" preceding "tasting" in (b)(3)(A).

3-5-105. Beer festival permit.

(a)(1) The Director of the Alcoholic Beverage Control Division may issue a temporary permit to authorize the following:

- (A) A festival to be conducted over a period not to exceed three (3) days;
- (B) The consumption by persons of legal age of beer and malt beverages, as defined by § 3-5-1202, on the festival grounds;
- (C) The permittee to charge an entry fee for persons wishing to attend the festival and to distribute beer and malt beverages on any day of the week, including Sunday, as provided for in this section, pursuant to the following conditions:
 - (i) The distribution of beer and malt beverages as authorized in this section, shall be limited to the secure area as prescribed in subsection (b) of this section; and
 - (ii) The distribution of beer and malt beverages on Sunday, as authorized in this section, shall be limited to the hours between 12:00 p.m. and 10:00 p.m. central time and be limited to those areas where the retail sale and consumption of alcoholic beverages on Sunday has been approved pursuant to Arkansas law;
- (D) The festival permittee to designate the permitted area on the festival grounds to be approved by the director, such that it is a secure area which will not allow unsupervised access and egress; and
- (E) Participation in this event by any legal brewery, microbrewery, microbrewery-restaurant, distributor, wholesaler, or brewpub, whether or not they are currently registered or their product is licensed in the State of Arkansas.

(2)(A) The director shall not issue this permit if the proposed location is in a dry area.

(B) The director may issue this permit only to a charitable or nonprofit organization as provided for by the Alcoholic Beverage Control Board, except that this permit may not be issued to a charitable or nonprofit organization holding a private club license.

(3) The permittee shall maintain the permit in conjunction with any other legally obtained permit.

(b)(1) The permittee shall provide to the board no later than one (1) week prior to the event a complete listing of those nonlicensed participants and the products they will be providing. The list shall include

proof of delivery, such as an invoice, from the participant which will denote such product or products being provided to the festival.

(2) The permittee may reimburse participants, if so desired, for the cost of the product provided for the licensed event.

(3)(A) The permittee shall designate one (1) wholesale distributor currently licensed in Arkansas to act as a temporary warehouse for those nonlicensed products to be stored prior to or following the event.

(B) Those products shall be stored for a period not to exceed one (1) week prior to and following the event.

(C) The designated wholesaler shall not be in violation of § 3-3-216, § 3-5-221, § 3-5-1307, or § 3-7-104.

(4)(A) The designated wholesaler shall pay the Miscellaneous Tax Section of the Office of Excise Tax Administration of the Department of Finance and Administration a wholesalers tax of \$7.507808 per barrel equal to thirty-one (31) gallons for each barrel of beer or malt beverage provided for this festival by any participant whose product is not currently licensed or registered in the State of Arkansas.

(B) This tax shall be paid in conjunction with the currently required miscellaneous tax and shall be paid by the same means as are currently required in the normal course of paying the miscellaneous tax.

(C) The designated wholesaler shall be reimbursed for this tax by the permittee and may collect a handling fee for services rendered in warehousing such nonlicensed product for this festival.

(c) Neither the participants in this event nor their products need be registered under § 3-2-409, § 3-5-1303, or § 3-7-106, nor shall they be in violation of § 3-3-216, § 3-3-304 [repealed], § 3-3-305 [repealed], § 3-5-205, § 3-5-210, § 3-5-211, § 3-5-216, § 3-5-217, or § 3-5-221 for this event only.

(d) The festival participants and attendees while on the festival grounds shall not be found to be in violation of § 5-71-212(c) or (d) regarding public consumption. This does not exclude any participant or attendee from being found in violation of § 5-71-212(a) or (b) regarding public intoxication.

(e) The permittee shall pay to the board a fee of two hundred fifty dollars (\$250) per event for a temporary permit under this section.

(f) Every provision of this section shall be subject to all beer and malt beverage laws and regulations, except that conflicting beer and malt beverage laws and regulations shall be inapplicable to any provision of this section to the extent that they conflict herewith.

History. Acts 1999, No. 1065, § 1; 2009, No. 294, § 12.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment, in (e), substituted "two hundred fifty dollars (\$250)" for "fifty dollars (\$50.00)" and inserted "for a temporary permit under this section."

3-5-107. Unlawful pricing by brewers and manufacturers.

(a) As used in this section, "discriminate" means the granting of a more favorable price, allowance, rebate, refund, commission, or discount to one (1) Arkansas distributor or wholesaler than to another Arkansas distributor or wholesaler.

(b) It is unlawful for:

(1) A brewer, manufacturer, or other person, firm, or corporation engaging in the business of selling beer, ale, or other malt beverage or malt cooler to a distributor or wholesaler to discriminate in price, allowance, rebate, refund, commission, or discount between distributors or wholesalers licensed in Arkansas; or

(2)(A) A brewer, manufacturer, or other person, firm, or corporation engaged in the business of selling beer, ale, or other malt beverage or malt cooler to a distributor or wholesaler to sell or deliver beer, ale, or other malt beverage or malt cooler to a licensed distributor or wholesaler unless the brewer, manufacturer, person, firm, or corporation files the brewery or dock price of the beer, ale, or other malt beverage or malt cooler by brand and container size with the Director of the Alcoholic Beverage Control Division.

(B) A brewery or dock price schedule increase shall not take effect until fourteen (14) days after receipt of the brewery or dock price schedule by the director.

(C) A brewery or dock price schedule decrease shall not take effect until two (2) days after receipt of the brewery or dock price schedule by the director.

(c) A violation of this section by a brewer, manufacturer, or other person, firm, or corporation engaging in the business of selling beer, ale, or other malt beverage or malt cooler to a distributor or wholesaler is grounds for denial or suspension of the license of the brewer, manufacturer, or other person, firm, or corporation engaging in the business of selling beer, ale, or other malt beverage or malt cooler to a distributor or wholesaler or other penalties as determined by the director under § 3-2-212.

(d) The director shall adopt rules to implement this section.

History. Acts 2009, No. 783, § 1.

SUBCHAPTER 2 — BEER AND LIGHT WINE**SECTION.**

3-5-205. Privilege tax — Levy and collection — Exception.

3-5-209. Transfer of permit — Dancing privileges — Inspection fee.

SECTION.

3-5-221. Miscellaneous prohibited practices — Penalties.

3-5-227. Registration of beer kegs for off-premises consumption.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-205. Privilege tax — Levy and collection — Exception.

- (a) For the privilege of doing business, there shall, each fiscal year beginning July 1, be assessed, levied, and collected from each:
 - (1)(A) Wholesale dealer or broker, or distributor in light wine or beer, a special tax of one thousand dollars (\$1,000) for each county in which the broker, distributor, or wholesale dealer operates.
 - (B) However, the special tax shall not exceed five thousand dollars (\$5,000) for any one (1) broker, distributor, or wholesale dealer;
 - (2) Manufacturer of beer, a special tax of seven hundred fifty dollars (\$750); and
 - (3) Retail dealer of nonintoxicating liquor, a special tax of three hundred fifty dollars (\$350).
 - (b) The tax shall be due and payable at each place where the business of the wholesale dealer, manufacturer, distributor, or retail dealer, as the case may be, is carried on.
 - (c) All special taxes shall become due and payable on or before June 30 of each calendar year for the fiscal year beginning July 1 or on commencing business on which the tax is imposed.

(d) The tax shall be levied, assessed, and collected by such methods, within the limitations prescribed in this subchapter, and under such regulations as may be regularly provided.

(e) However, a grower of grapes and other fruits may manufacture and sell wine upon the premises of the grower in original packages of not less than one-fourth ($\frac{1}{4}$) of a gallon from grapes and other fruits actually grown by the party so manufacturing wine upon his or her own premises, free from the license fees and taxes provided in this subchapter. A "grower" is defined to be one who actually grows and produces grapes and other fruits upon his own premises or upon the premises occupied by him or her as a tenant.

(f)(1) However, any person in this state may manufacture home-brewed beer or home-manufactured wine:

(A) Upon his or her own premises free from the license fees and taxes provided in this subchapter;

(B) For consumption by the manufacturer and his or her family and guests, but not for sale; and

(C) In quantities per calendar year not to exceed:

(i) Two hundred (200) gallons if there are two (2) or more adults in the household; or

(ii) One hundred (100) gallons if there is only one adult in the household.

(2) While the manufacture of beer or wine is declared to be a privilege, the home manufacture of beer or wine in quantities not to exceed two hundred (200) gallons per calendar year shall be exempted from §§ 3-4-101, 3-4-602, 3-5-205(a)-(e), 3-5-206, and 3-5-211.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 4, 11; Pope's Dig., §§ 14196, 14203; Acts 1953, No. 372, § 1; 1957, No. 375, § 1, as added by 1953, No. 118, § 36(F), as added by 1971, No. 585, § 12; 1983, No. 420, § 1; A.S.A. 1947, §§ 48-504, 48-507, 48-313.1; Acts 1993, No. 528, §§ 1, 2; 1995, No. 1051, § 2; 2001, No. 1813, § 1; 2009, No. 294, § 13.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment, in (a), redesignated (a)(1), substituted "one thousand dollars (\$1,000)" for "two hundred fifty dollars (\$250)" in (a)(1)(A), substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" in (a)(1)(B), substituted "seven hundred fifty dollars (\$750)" for "five hundred dollars (\$500)" in (a)(2), substituted "three hundred fifty dollars (\$350)" for "two hundred dollars (\$200)" in (a)(3), and made related and minor stylistic changes.

3-5-209. Transfer of permit — Dancing privileges — Inspection fee.

(a) A person that holds an alcoholic beverage control permit may request that certain special applications be made on the permit as follows:

(1) A permit holder may request a transfer of location of a permit to a new location subject to any restrictions or qualifications that may apply to the permit;

(2) A permit holder requesting the addition of dancing of any kind on the permit may request dancing subject to any restrictions that may apply to the permit;

(3) A permit holder may request a change of trade name for the permitted business subject to any restrictions that apply to the permit;

(4) A partnership, corporation, or limited liability company may request a change of manager application so that the existing manager of the partnership, corporation, or limited liability company is replaced by a new manager subject to any restrictions that may apply to the permit; and

(5) An on-premises consumption permittee which has filed an entertainment activity sheet as required by the Alcoholic Beverage Control Division rules may file a request for permission to amend the entertainment activity sheet that was filed with the permit, subject to any restrictions or qualifications that apply to the permit.

(b)(1) The fee for any of the special applications set forth in subsection (a) of this section is fifty dollars (\$50.00) for each special application.

(2) The special application fee is payable at the time the special application is made.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 4; Pope's Dig., § 14196; Acts 1953, No. 372, § 1; 1957, No. 375, § 1, as added by 1953, No. 118, § 36(F), as added by 1971, No. 585, § 12; A.S.A. 1947, § 48-504; 2009, No. 294, § 14.

A.C.R.C. Notes. Acts 2009, No. 294,

§ 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment rewrote the section.

3-5-221. Miscellaneous prohibited practices — Penalties.

(a)(1) Any person being either a retail dealer or who knowingly places in his or her stock, who brings upon his or her premises, who has in his or her possession, or who sells or offers for sale any beer or wine on which the tax provided by law has not been paid, in addition to the other fines, penalties, and forfeitures shall be subject to a penalty of twenty-five dollars (\$25.00) for each package of untaxed liquor so held or offered for sale.

(2) The penalty shall be in the nature of liquidated damages and may be collected by civil action.

(b) It shall be unlawful for any brewer or distributor of light wines or beer to manufacture or knowingly bring upon his or her premises and keep thereon any beer or wine of an alcoholic content in excess of five percent (5%) by weight or any distilled spirits of any alcoholic content whatsoever.

(c) Any person who shall add to or mix with any beer or wine as defined in this subchapter any alcoholic or any other liquid, any alcohol cube or cubes, or any other ingredient or ingredients that will increase or tend to increase the alcoholic content or who shall knowingly offer

any such liquor for sale shall be guilty of a violation and shall be fined in any sum not less than one hundred dollars (\$100).

(d)(1) It shall be unlawful for a licensee or for any agent, servant, or employee of a licensee:

(A)(i) To suffer or permit any dice to be thrown for money or for anything of value or to suffer or permit gambling with cards, dominoes, raffle, or other games of chance or any form of gambling in the place designated by the license or in any booth, room, yard, garden, or other place appurtenant thereto.

(ii) Forms of gambling under subdivision (d)(1)(A)(i) of this section do not include:

(a) Charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.; or

(b) A lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.;

(B) To suffer or permit the licensed premises to become disorderly;

(C) To sell, barter, furnish, or give away to any minor under twenty-one (21) years of age any wine or beer;

(D) To sell, barter, furnish, or possess in the place designated by the license or in any booth, yard, or garden any alcoholic liquors or beverages containing in excess of five percent (5%) of alcohol by weight or to permit any such acts to be done;

(E) To permit any immoral or lascivious conduct on the part of the patrons or others at or in the licensed premises or in any place appurtenant thereto; or

(F) To suffer or permit the use of any profane, violent, abusive, or vulgar language at or in such licensed premises or in any place appurtenant thereto.

(2) The acts and conduct of the agents, servants, and employees of a licensee in the conduct of the business shall be deemed the acts and conduct of the licensee.

(3) Any violation of the provisions of this subsection shall constitute a Class A misdemeanor, and each day the offense shall be continued shall constitute a separate offense.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 16, 19, 26; 1937, No. 261, § 1; Pope's Dig., §§ 14208, 14211, 14218; A.S.A. 1947, §§ 48-522 — 48-524; Acts 2005, No. 1994, § 31; 2009, No. 605, § 10; 2009, No. 606, § 10.

Amendments. The 2009 amendment by identical acts Nos. 605 and 606 inserted (d)(1)(A)(ii), redesignated the remaining text accordingly, and made a related change.

3-5-227. Registration of beer kegs for off-premises consumption.

(a) As used in this section:

(1) "Beer" means any fermented liquor made from malt or any substitute therefor and having an alcoholic content not in excess of five percent (5%) by weight;

(2) "Keg" means a vessel which has a liquid capacity of more than five gallons (5 gals.);

(3) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of no less than five percent (5%) nor more than twenty-one percent (21%) by weight; and

(4) "Off-premises" means a place other than the licensed retailer's place of business.

(b) All retail dealers that sell a keg of beer or malt beverage for off-premises consumption are required to attach an identification label or tag approved by the Alcoholic Beverage Control Division to the keg prior to the sale.

(c)(1) The identification label or tag approved by the Alcoholic Beverage Control Division shall consist of paper within a clear protective coating made of plastic, metal, or another durable material that is not easily damaged or destroyed.

(2) The paper shall be of a kind to allow the required information to be copied and retained by the retail dealer.

(3) Identification labels used may contain a nonpermanent adhesive material in order to apply the label directly to an outside surface of a keg at the time of sale.

(4) Identification tags shall be attached to the kegs at the time of sale with nylon ties or cording, wire ties or other metal attachment devices, or another durable means of tying or attaching the tag to the keg.

(5) The identification label or tag shall be designed so that when affixed to a keg, the label or tag will not mar or otherwise physically damage the keg.

(6) The identification label or tag shall include:

(A) The name and address of the retail dealer;

(B) The name of the purchaser; and

(C) An individual identification number assigned by the retail dealer that uniquely identifies the keg.

(7) Each identification label or tag shall be perforated and of a composition that consistently allows for the full removal of the tag when common external keg cleaning procedures are performed at retail.

(d)(1) Before the retail sale of a keg of beer or malt beverage for off-premises consumption, the retail dealer shall require the purchaser to sign a statement promulgated by the Director of the Alcoholic Beverage Control Division attesting under the penalty of perjury:

(A) To the accuracy of the purchaser's name as shown on the identification label or tag;

(B) That the purchaser is aware that giving, procuring, or otherwise furnishing an alcoholic beverage to a person under twenty-one (21) years of age is a criminal offense as provided in §§ 3-3-201 and 3-3-202; and

(C) That the purchaser will not allow any person under twenty-one (21) years of age to consume any of the beer or malt beverage in the keg.

(2) The retail dealer shall also record the following:

- (A) The name and address of the purchaser;
- (B) The identification card or driver's license number from the purchaser's acceptable documentation of age;
- (C) The amount of the container deposit of not less than seventy-five dollars (\$75.00);
- (D) The date and time of the purchase; and
- (E) The keg identification number required under subsection (c) of this section.

(e)(1) All records and statements required under this section shall be maintained by the retail dealer for a period of ninety (90) days from the date of the return of the keg.

(2) The records and statements shall remain open to inspection by authorized agents of the Alcoholic Beverage Control Enforcement Division and law enforcement officers during the retail dealer's normal business hours.

(f)(1) The retail dealer shall notify the Director of the Alcoholic Beverage Control Enforcement Division on forms promulgated by the Alcoholic Beverage Control Division within ten (10) days of the forfeiture of a container deposit by a purchaser.

(2) The notification form shall consist of:

- (A) The name and address of the retail dealer;
- (B) The name and address of the purchaser;
- (C) The retail dealer's beer permit or license number;
- (D) A fee of twenty-five dollars (\$25.00) remitted to the Alcoholic Beverage Control Division; and

(E) A statement indicating the reason for forfeiture of the container deposit by the purchaser, including, but not limited to, the following reasons:

- (i) The keg was not returned;
- (ii) The keg was returned more than one hundred twenty (120) days after purchase;
- (iii) The identification label or tag was removed; or
- (iv) The identification label or tag was damaged.

(3) Any retail dealer that fails to notify the Director of the Alcoholic Beverage Control Enforcement Division within ten (10) days of the forfeiture of a container deposit by a purchaser is guilty of:

- (A) A violation of this subchapter; and
- (B) A Class B violation, as provided in § 3-4-402, against the retailer's permit.

(g)(1) No person other than the retail dealer, a licensed wholesaler, or an agent of the Alcoholic Beverage Control Enforcement Division may knowingly remove an identification label or tag placed on a keg.

(2) Any person other than the retail dealer, licensed wholesaler, or an agent of the Alcoholic Beverage Control Enforcement Division that is knowingly in possession of a keg without an identification label or tag or knowingly removes or damages an identification label or tag is guilty of a violation of this subchapter.

(h)(1) The Director of the Alcoholic Beverage Control Division may promulgate rules and prescribe forms for the proper enforcement of this

section, including an approved identification label or tag for use under this section.

(2) The Alcoholic Beverage Control Division shall seek the input of licensed brewers and licensed beer importers in developing the label or tag.

History. Acts 2005, No. 2320, § 1; 2007, No. 254, § 1; 2007, No. 827, § 10; 2009, No. 548, § 3.

Amendments. The 2009 amendment redesignated (d)(1)(B) as (d)(1)(B) and (C), and made minor stylistic changes.

SUBCHAPTER 3 — BEER — LICENSING OF RETAILERS

SECTION.

3-5-302. Applications — Qualifications of applicant.

SECTION.

3-5-307. Prohibited practices.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be imple-

mented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-302. Applications — Qualifications of applicant.

No license shall be issued to any person authorizing the sale of beer at retail unless the person shall file a verified application, accompanied by the fee required by law, and shall state in the application that he or she possesses the following qualifications:

(1) The applicant must be a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in which the permit will be operated or reside within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant shall not have been convicted of a felony or have been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or the laws of any other state relating to the sale of alcoholic beverages;

(3) The applicant shall not have had revoked, within five (5) years next-preceding his or her application, any license issued to him or her

pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(4) The applicant shall be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(5) If the applicant is a copartnership, all members of the partnership must be qualified to obtain a license;

(6)(A)(i) If the applicant is a corporation, the president and directors, any stockholder owning more than five percent (5%) of the stock of the corporation who are not exempted under subdivision (6)(A)(ii) of this section, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(ii) An applicant is not required to state the identity of its shareholders who are not the president or a director when the corporation:

- (a) Is publicly traded on a nationally recognized stock exchange; or
- (b) Holds at least ten (10) permits issued by the Alcoholic Beverage Control Division for the sale of alcoholic beverages.

(B) The requirement as to residence in the United States or citizenship of the United States shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises.

History. Acts 1943, No. 244, § 1; 1967, No. 239, § 2; 1973, No. 189, § 2; A.S.A. 1947, § 48-528; Acts 1989, No. 295, § 1; 1991, No. 606, § 5; 1995, No. 536, § 1; 1999, No. 948, § 1; 2013, No. 325, § 3.

Amendments. The 2013 amendment rewrote (6)(A).

3-5-307. Prohibited practices.

No holder of a license authorizing the sale of beer for consumption on the premises where sold or any servant, agent, or employee of the licensee shall do any of the following upon the licensed premises:

(1) Knowingly sell beer or wine to a minor;

(2) Knowingly sell beer or wine to any person while the person is in an intoxicated condition;

(3) Sell beer or wine upon the licensed premises or permit beer to be consumed thereon, on any day or at any time when the sale or consumption is prohibited by law;

(4) Permit any prostitute to frequent the licensed premises;

(5)(A) Permit gambling or games of chance upon the licensed premises.

(B) Permitting gambling or games of chance under subdivision (5)(A) of this section does not include:

(i) Charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.; or

- (ii) A lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.;
- (6) Permit on the licensed premises any disorderly conduct, breach of the peace, or any lewd, immoral, or improper entertainment, conduct, or practices;
- (7) Sell, offer for sale, or permit the sale on the licensed premises of any kind of alcoholic liquors, except wine and beer; or
- (8) Permit the consumption on the licensed premises of wine or any other kind of alcoholic liquor, except beer.

History. Acts 1943, No. 244, § 2; 1945, No. 119, § 1; A.S.A. 1947, § 48-529; Acts 2009, No. 605, § 11; 2009, No. 606, § 11.

Amendments. The 2009 amendment

by identical acts Nos. 605 and 606 inserted (5)(B), redesignated the remaining text accordingly, and made a related change.

SUBCHAPTER 9 — NATIVE WINES — INCENTIVE GRANTS

SECTION.

3-5-907. Payments — Amount.

3-5-907. Payments — Amount.

(a) Grant payments as authorized in this subchapter shall be made by the Director of the Department of Finance and Administration from moneys appropriated by the General Assembly for that purpose at each regular session and fiscal session of the General Assembly.

(b) Grant funds awarded shall be distributed equally to each winery at a base amount not to exceed twenty-five thousand dollars (\$25,000), with any remaining balance of the grant to be divided among each grantee according to the same ratio as the wine taxes paid in the previous calendar year by the grantee, as determined by the Chief Fiscal Officer of the State.

(c) Applications for grants shall be submitted to the Chief Fiscal Officer of the State on or by the 15th of June.

History. Acts 1985, No. 681, §§ 2, 3; A.S.A. 1947, §§ 48-653, 48-654; Acts 2003 (1st Ex. Sess.), No. 50, § 111; 2009, No. 962, § 3.

Amendments. The 2009 amendment substituted “regular session and fiscal” for “biennial” in (a).

SUBCHAPTER 11 — BEER — WHOLESALEERS AND SUPPLIERS

SECTION.

3-5-1102. Definitions.

3-5-1102. Definitions.

(a) The following words or phrases, or the plural thereof, whenever they appear in this subchapter shall have, unless the context clearly requires otherwise, the meanings ascribed to them in this section:

(1) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier;

(2) "Ancillary business" means:

(A) A business owned by the wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement; or

(B) A business owned by a wholesaler, a substantial stockholder of a wholesaler, or a substantial partner of a wholesaler which recycles empty beverage containers of the supplier;

(3) "Beer" includes light wine and shall carry the same definitions as set forth in § 3-5-202(3) and (4);

(4) "Designated member" means and includes:

(A) The spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest, including a controlling interest, in a wholesaler;

(B) Any person who inherits under the deceased individual's will or under the laws of intestate succession of this state;

(C) Any person or entity which has through a valid testamentary device by the deceased individual succeeded the deceased individual's ownership interest in the wholesaler pursuant to a written contract or instrument which has been previously approved by a supplier;

(D) The appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler; and

(E) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an ownership interest in a wholesaler;

(5) "Director" means the Director of the Alcoholic Beverage Control Division;

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under the Uniform Commercial Code, § 4-1-101 et seq.;

(7) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective supplier for similarly situated wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the wholesaler's business, or for similarly situated wholesalers who have changed managers or designated managers during a period of twenty-four (24) months prior to the proposed change in the manager or successor manager of the wholesaler's business;

(8) "Retaliatory action" means the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith;

(9) "Sales territory" means an area of exclusive sales responsibility for the brand or brands of beer sold by a supplier as designated by an agreement;

(10) "Similarly situated wholesalers" means wholesalers of a supplier that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, as well as reasonably similar economic and geographic conditions;

(11) "Substantial stockholder or substantial partner" means a stockholder of or partner in the wholesaler who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporate wholesaler;

(12)(A) "Supplier" means a manufacturer or importer of beer and light wine brands as registered with the director.

(B) "Supplier" does not include a small brewery under the Arkansas Native Brewery Act, § 3-5-1401 et seq.;

(13) "Transfer of wholesaler's business" means the voluntary sale, assignment, or other transfer of ten percent (10%) or more or control of the business or all or substantially all of the assets of the wholesaler, or ten percent (10%) or more or control of the capital stock of the wholesaler, including, without limitation, the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler; and

(14) "Wholesaler" means a wholesaler of beer and light wine as licensed by the Alcoholic Beverage Control Board and as defined in § 3-5-202(10).

(b) Other words and phrases used in this subchapter shall have the meanings ascribed to them in §§ 3-1-102 and 3-5-202, as amended, and any acts amendatory thereof, supplementary thereto, or substituted therefor unless the context clearly requires otherwise.

History. Acts 1991, No. 8, § 2; 1991, No. 866, § 2; 2011, No. 982, § 1.

Amendments. The 2011 amendment inserted present (a)(12)(B).

SUBCHAPTER 12 — MICROBREWERY — RESTAURANTS

SECTION.

3-5-1205. Fees and taxes.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding

the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage

Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-1205. Fees and taxes.

A microbrewery-restaurant licensee shall:

- (1) Pay any applicable city or county license or permit fees and barrelage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of seven hundred fifty dollars (\$750) per fiscal year to manufacture and sell its beer and malt beverages for consumption both on and off the premises and to sell any other beer and malt beverages purchased from a licensed wholesaler for consumption on the premises;
- (2) Measure beer and malt beverages manufactured by the microbrewery, otherwise comply with applicable regulations respecting excise and enforcement tax determination of such beer and malt beverages, and pay any applicable bond or deposit and the amount of the state excise tax and enforcement tax to this state, as required by §§ 3-7-104 and 3-7-111; and
- (3) Pay a state permit fee to the Alcoholic Beverage Control Board of two hundred dollars (\$200) per year for the rights and privileges provided by the microbrewery-restaurant distribution permit granted under § 3-5-1204(b).

History. Acts 1991, No. 611, § 1; 1995, No. 491, § 4; 1997, No. 916, § 2; 1999, No. 319, § 2; 2009, No. 294, § 15.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become

effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment, in (3), substituted "two hundred dollars (\$200)" for "one hundred fifty dollars (\$150)" and made minor stylistic changes.

SUBCHAPTER 13 — NONRESIDENT BEER SELLER'S PERMITS

SECTION.

3-5-1306. Application for permit.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding

the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage

Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-1306. Application for permit.

(a) Any manufacturer, importer, or other person desiring to obtain a nonresident seller's permit or wholesaler support center permit may make application for such to the Alcoholic Beverage Control Division on forms provided by the division.

(b)(1)(A) In addition, every applicant for a nonresident seller's permit shall pay to the division an annual permit fee of three hundred fifty dollars (\$350) if the applicant shipped, sold, or otherwise distributed fewer than two hundred (200) barrels, as defined for excise tax purposes under this Code, of any beer or malt in this state in the year immediately preceding the application.

(B) If the applicant shipped, sold, or otherwise distributed in this state from two hundred (200) to one thousand (1,000) barrels in the year immediately preceding application, the applicant shall pay an annual permit fee of one thousand dollars (\$1,000).

(C) If the applicant shipped, sold, or otherwise distributed in this state more than one thousand (1,000) barrels in the year immediately preceding application, the applicant shall pay an annual permit fee of two thousand dollars (\$2,000).

(2) Each holder of a nonresident seller's permit shall pay the permit fee based on the previous calendar year's shipments into the state.

(c)(1)(A) Each permit shall be valid for one (1) fiscal year which shall run from the first day of July to the last day of June.

(B) Any applicant receiving a permit during the course of any fiscal year shall not be relieved of the obligation to pay the full amount of the annual permit fee.

(2)(A) As long as a permit has not been revoked or cancelled, it shall be renewable for successive years upon the payment of the appropriate annual permit fee on or before June 30 of each calendar year.

(B) Any person not renewing the permit described in subsection (b) of this section on or before June 30 shall be subject to the penalties and provisions provided for in § 3-4-216.

(d) An applicant for a wholesaler support center permit shall pay an annual permit fee of two thousand dollars (\$2,000).

History. Acts 1995, No. 537, § 6; 1999, No. 96, § 5; 2009, No. 294, § 16, 17.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become

effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment, in (b), substituted "three hundred fifty dollars (\$350)" for "one hundred dollars

(\$100)" in (b)(1)(A), substituted "one thousand dollars (\$1,000)" for "five hundred dollars (\$500)" in (b)(1)(B), substituted "two thousand dollars (\$2,000)" for "one thousand dollars (\$1,000)" in (b)(2); sub-

stituted "two thousand dollars (\$2,000)" for "one thousand dollars (\$1,000)" in (d); and made related and minor stylistic changes.

SUBCHAPTER 14 — ARKANSAS NATIVE BREWERY ACT

SECTION.

3-5-1403. Definitions.

3-5-1405. Licenses — Scope — Restrictions.

SECTION.

3-5-1408. Fees and taxes.

3-5-1415. Sales on any day of the week.

3-5-1416. Small brewery not a supplier.

3-5-1403. Definitions.

As used in this subchapter:

- (1) "Barrel" means thirty-one gallons (31 gals.);
- (2) "Beer" means any fermented liquor made from malt or any substitute having an alcoholic content of not more than five percent (5%) by weight;
- (3) "Brewery" means the facilities of a native brewer that operate a small brewery, contract brewing company, microbrewery, or restaurant;
- (4) "Contract brewing company" means any licensed brewery that hires another company to produce a portion of its beer or malt beverage;
- (5) "Director" means the Director of the Alcoholic Beverage Control Division;
- (6) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of no less than five percent (5%) nor more than twenty-one percent (21%) by weight;
- (7) "Microbrewery-restaurant" means any restaurant that manufactures one (1) or more varieties of beer or malt beverage in an aggregate quantity of not more than five thousand (5,000) barrels per year and stores the beer or malt beverages on the premises or on any adjacent premises;
- (8) "Native brewer" means any person who is licensed by the Alcoholic Beverage Control Division to manufacture and sell beer and malt beverages at a small brewery or microbrewery-restaurant;
- (9) "Native brewery" means a small brewery or microbrewery-restaurant;
- (10) "Person" means any natural person, partnership, association, or corporation;
- (11) "Producer brewery" means any licensed brewery, domestic or foreign, that manufactures or packages beer or malt beverages for a small brewery, contract brewing company, microbrewery, or restaurant;
- (12) "Restaurant" means any public or private facility that:
 - (A) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are regularly served, and the place is provided with adequate and sanitary kitchen and dining equipment and has a seating capacity of at least fifty (50) people and employs a sufficient

number of employees to prepare, cook, and serve food suitable for its guests or members; and

(B) Serves at least one (1) meal per day, and the place is open a minimum of five (5) days per week with the exception of holidays, vacations, and periods of redecorating; and

(13) "Small brewery" means any licensed facility that manufactures fewer than thirty thousand (30,000) barrels of beer and malt beverages per year for sale or consumption.

History. Acts 2003, No. 1805, § 3; 2009, No. 1459, § 1. and redesignated the subsequent subdivisions accordingly; and substituted "thirty thousand (30,000)" for "60,000" in present (13).

Amendments. The 2009 amendment deleted former (3), which defined "board,"

3-5-1405. Licenses — Scope — Restrictions.

(a) The Director of the Alcoholic Beverage Control Division may issue a license for a licensee:

(1) To operate a small brewery that:

(A) Manufactures at its licensed facility:

(i) No less than thirty-five percent (35%) of its beer and malt beverages to be sold in the state and no more than thirty thousand (30,000) barrels per year; or

(ii) Purchases from a producer brewery beer or malt beverages in an aggregate quantity not to exceed sixty thousand (60,000) barrels per year;

(B) Sells to wholesale or to the consumer for consumption either on or off the premises brand name products of the licensed facility;

(C) Stores any beer and malt beverages legally purchased for resale on the premises;

(D) Serves on the premises or at small brewery off-premises retail sites complimentary samples of beer produced by the small brewery or another licensed small brewery if the small brewery or its off-premises retail sites are located in a wet territory;

(E) Sells at retail by the drink or by the package beer produced on the premises of the small brewery or produced by another small brewery if all sales occur in a wet territory and at:

(i) The small brewery off-premises retail sites; or

(ii)(a) Fairs and food and beer festivals, with the permission and the consent of the management of the events.

(b) A sales and use tax permit also is required for sales under this subdivision (a)(1)(E)(ii);

(F)(i) Sells and transports beer produced on the premises of the small brewery or of another small brewery to wholesale and retail license holders and small brewery license holders.

(ii) To sell and transport beer under subdivision (a)(1)(F)(i) of this section, the small brewery shall obtain a small brewery wholesale permit; and

(G) Sells for consumption on the premises of the small brewery beer produced by the small brewery or another small brewery and

purchased by the drink or by the package at the licensed premises if the small brewery is located in a wet territory; or

(2) To operate a microbrewery-restaurant that:

(A) Manufactures beer and malt beverages in an aggregate quantity not to exceed five thousand (5,000) barrels per year;

(B)(i) Sells to wholesale or retail dealers or to the consumer for consumption either on or off the premises.

(ii) However, off-premise sales are limited to brand name products of the licensed facility;

(C) Stores any beer and malt beverages purchased for resale on the premises; and

(D) Sells wine on the premises.

(b) Notwithstanding the provisions of any other law to the contrary, beer and malt beverages may be sold for on-premises or off-premises consumption during all legal operating hours in which business is normally and legally conducted on the premises, if:

(1) The brewery provides tours through its facility; and

(2) Only sealed containers are removed from the premises.

(c)(1) A native brewery may provide beer and malt beverages it manufactures to charitable or nonprofit organizations or sell for resale beer and malt beverages it manufactures to charitable or nonprofit organizations holding valid special event permits issued by the Alcoholic Beverage Control Board.

(2) The sale of those products is limited to the duration of the particular special event.

(d) Any person holding a valid microbrewery-restaurant license is considered a native brewery licensee that maintains production limits according to the definition of microbrewery-restaurant in § 3-5-1403.

History. Acts 2003, No. 1805, § 5; 2009, No. 1459, § 2.

Amendments. The 2009 amendment subdivided (a)(1)(A), inserted “and no

more than thirty thousand (30,000) barrels per year” in (a)(1)(A)(i), inserted (a)(1)(D) through (a)(1)(G) and (a)(2)(D), and made related changes.

3-5-1408. Fees and taxes.

A native brewer shall:

(1) Pay any applicable city or county license or permit fees and barrage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of three hundred dollars (\$300) per fiscal year to:

(A) Manufacture and sell its beer and malt beverages for consumption, both on and off the premises; and

(B) Sell any other beer and malt beverages purchased from a licensed dealer for consumption on or off the premises;

(2) Measure beer and malt beverages manufactured by the small brewer or purchased from a producer brewery, or otherwise comply with applicable regulations respecting excise and enforcement tax determination of the beer and malt beverages, and pay any applicable bond or deposit and the amount of the state excise tax and enforcement tax to

this state as required, but is free from the fees and taxes provided in § 3-5-205 and as required by §§ 3-7-104 and 3-7-111; and

(3) Pay a tax at the rate of seven dollars and fifty cents (\$7.50) per barrel, and proportionately for larger and smaller gallonages per barrel, on all beer and malt beverages in quantities of up to thirty thousand (30,000) barrels per year and sold or offered for sale in the state.

History. Acts 2003, No. 1805, § 8; 2009, No. 1459, § 3.

Amendments. The 2009 amendment substituted "three hundred dollars (\$300)" for "two hundred fifty dollars

(\$250)" in the introductory language of (1); substituted "small brewer" for "native brewer" in (2); and substituted "thirty thousand (30,000)" for "sixty thousand (60,000)" in (3).

3-5-1415. Sales on any day of the week.

Small brewery beer and malt beverages may be sold at any small brewery located in this state for on-premises or off-premises consumption on any day of the week.

History. Acts 2009, No. 1459, § 4.

3-5-1416. Small brewery not a supplier.

A small brewery is not a supplier under § 3-5-1102.

History. Acts 2009, No. 1459, § 4.

SUBCHAPTER 16 — FREE TRADE AMONG SMALL WINERIES

SECTION.

3-5-1602. Licensing of small farm wineries.

SECTION.

3-5-1605. License fees generally.

3-5-1609. Penalty.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 763, § 6: Apr. 1, 2009. Emergency clause provided: "It is hereby found and determined that Act 294 of 2009 became effective, by emergency clause, on March 3, 2009, and that it has been found that there are some technical corrections that need to be placed into immediate operation. It is further determined that these technical corrections are

necessary to give full force and effect to the provisions of Act 294 of 2009 and that if this technical corrections bill is not passed with an emergency clause then unnecessary confusion concerning the provisions of Act 294 of 2009 may arise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public

peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-1601. Definition.

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas's Response to Granholm v. Heald: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

3-5-1602. Licensing of small farm wineries.

- (a) An in-state or out-of-state small farm winery may apply to the Alcoholic Beverage Control Board for a small farm winery license.
- (b)(1) A small farm winery may be licensed by the board.
- (2) A license shall:
 - (A) Show the registration number and location of the small farm winery;
 - (B) Show the name of the person that owns or operates the small farm winery; and
 - (C) Be conspicuously posted at the small farm winery.
- (c)(1) A small farm winery license authorizes the licensee to perform the following functions without the small farm winery having to obtain a separate license:
 - (A) Manufacture wines and bottle wines produced by that small farm winery;
 - (B) Bottle wines produced by another small farm winery;
 - (C) Serve on the premises or at small farm winery off-premises retail sites complimentary samples of wine produced by the small farm winery or another licensed small farm winery, if the small farm winery or its off-premises retail site is located in a wet territory;
 - (D) Sell at retail by the drink or by the package wine produced on the premises of the small farm winery or produced by another small farm winery, if all sales occur in a wet territory and at:
 - (i) The small farm winery off-premises retail sites; or
 - (ii) Fairs and food and wine festivals, with the permission and the consent of the management of the events. A sales and use tax permit is also required;
 - (E)(i) Sell and transport wine produced on the premises of the small farm winery or of another small farm winery to wholesale and retail license holders and small farm winery license holders.

(ii) To exercise the privileges of subdivision (c)(1)(E)(i) of this section, the small farm winery shall obtain a wine wholesale permit or sell to a licensed small farm winery wholesaler;

(F) Sell for consumption on the premises wine produced by the small farm winery or another small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in a wet territory; and

(G) Receive shipments of sparkling wine or champagne in bottles with or without a label from other in-state or out-of-state small farm wineries.

(2) A small farm winery off-premises retail site shall be separately licensed under § 3-5-1605(a)(3) before performing the operations listed in subdivision (c)(1) of this section at the off-premises retail site.

(d) An applicant for a small farm winery license shall submit with its application to the board a copy of the small farm winery's federal basic permit and proof documenting its annual wine production.

History. Acts 2007, No. 668, § 1; 2009, No. 1195, § 1; 2013, No. 1001, § 1.

Amendments. The 2009 amendment subdivided (c)(1)(E); and in (c)(1)(E)(i), substituted "subdivision (c)(1)(E)(i) of this

section" for "this subdivision," inserted "or sell to a licensed small farm winery wholesaler," and made a minor stylistic change.

The 2013 amendment added (c)(1)(G).

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas's Response to *Granholm v. Heald*: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

3-5-1605. License fees generally.

(a) For the privilege of doing business respectively, as indicated in this section, there shall be imposed, assessed, levied, and collected each fiscal year beginning July 1, the following license fees:

(1)(A) For the privilege of manufacturing wine in quantities not to exceed five thousand gallons (5,000 gals.), a license fee of two hundred dollars (\$200) shall be paid by the manufacturer.

(B) However, a person in this state may manufacture wine from fruits or vegetables in quantities not to exceed two hundred gallons (200 gals.) for consumption in the person's home by the person and the person's guests but not for sale free from the license fee under subdivision (a)(1)(A) of this section;

(2) For the privilege of manufacturing small farm wine in excess of five thousand gallons (5,000 gals.), a license fee of four hundred dollars (\$400) shall be paid by the manufacturer;

(3)(A) For the privilege of selling small farm winery wine except by a manufacturer for consumption at the manufacturer's winery, there shall be paid for each retail dealer's license a fee of one hundred dollars (\$100).

(B)(i) This subdivision (a)(3) applies to all retail licenses for grocery stores, convenience stores, liquor stores, and package stores that sell malt beverages and wine.

(ii) A retail liquor store may sell small farm winery wine without the small farm winery wine retail permit;

(4)(A) For the privilege of selling small farm wine except by a manufacturer at the manufacturer's winery, there shall be paid for each wholesale dealer's license a fee of one hundred dollars (\$100).

(B) This subdivision (a)(4) applies to all alcoholic beverage wholesale distributors;

(5) For the privilege of selling small farm winery wine at the small farm winery or in this state, there is imposed, assessed, and levied a tax of seventy-five cents (75¢) per gallon upon all the small farm winery wine manufactured and sold in this state under this subchapter; and

(6) For the privilege of selling small farm winery light wine at the small farm winery or in this state, there is imposed, assessed, and levied a tax of twenty-five cents (25¢) per gallon upon all small farm winery light wine manufactured and sold in this state under the provisions of this subchapter.

(b) For existing licenses:

(1) A person that holds a license for the sale of native wine issued under this chapter before March 29, 2007, may conduct business as a small farm winery wholesaler or retailer until the native wine license expires; and

(2) Upon the expiration of a native wine license issued under this chapter on or before March 29, 2007, the Alcoholic Beverage Control Board may issue a new license as part of the renewal process if the wholesaler or retailer:

(A) Meets the criteria under this section; and

(B) Is in good standing.

(c) Tax on wine shall be based on the amount sold.

History. Acts 2007, No. 668, § 1; 2009, No. 294, § 18; 2009, No. 548, §§ 4–6; 2009, No. 763, § 4.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment by No. 294, in (a), substituted "two hundred dollars (\$200)" for "one dollar (\$1.00) per one thousand (1,000) gallons" in (a)(1)(A), rewrote (a)(1)(B), substituted "four hundred dollars (\$400)" for "two hundred fifty dollars (\$250)" in (a)(2), redesignated (a)(3), substituted "one hun-

dred dollars (\$100)" for "fifteen dollars (\$15.00)" in (a)(3)(A), redesignated (a)(4), substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in (a)(4)(A), and made related and minor stylistic changes.

The 2009 amendment by No. 548, in (a), rewrote the introductory language of (a)(1)(B), and substituted "alcoholic beverage" for "beverage alcohol" in (a)(4); and made minor stylistic changes in (a) and (b).

The 2009 amendment by No. 763 inserted "liquor stores, and package stores" in (a)(3)(B)(i), inserted (a)(3)(B)(ii), and made related changes.

3-5-1607. Sales on any day of the week.

RESEARCH REFERENCES

Ark. L. Rev. Comment, Arkansas's Response to Granholm v. Heald: The Small Farm Winery Law Provides an Appropri-

ate Remedy for Commerce Clause Violations, 61 Ark. L. Rev. 487.

CASE NOTES

Constitutionality.

Because there was no actual or prospective competition between in-state and out-of-state wineries in the area of direct-shipment sales to Arkansas consumers, there could be no local preference, whether by express discrimination

against interstate commerce or undue burden upon it, to which the dormant Commerce Clause could apply; thus, this section neither discriminates against nor unduly burdens interstate commerce. Beau v. Moore, 2007 U.S. Dist. LEXIS 83659 (E.D. Ark. Nov. 1, 2007).

3-5-1609. Penalty.

Upon conviction, a person who violates this subchapter or any reasonable rule adopted under this subchapter by the Director of the Alcoholic Beverage Control Division or the Director of the Department of Finance and Administration is guilty of a Class B misdemeanor.

History. Acts 2007, No. 668, § 1; 2009, No. 548, § 7.

Amendments. The 2009 amendment inserted "Upon conviction," deleted "or

regulation" following "rule," inserted "under this subchapter," and made related and minor stylistic changes.

SUBCHAPTER 17 — DIRECT SHIPMENT OF VINOUS LIQUOR ACT

SECTION.

- 3-5-1701. Title.
- 3-5-1702. Definitions.
- 3-5-1703. Registration — Renewal fee.
- 3-5-1704. Purchase — Payment of taxes.

SECTION.

- 3-5-1705. Direct shipment.
- 3-5-1706. Delivery.
- 3-5-1707. Rules.
- 3-5-1708. Disposition of funds.

3-5-1701. Title.

This subchapter shall be known and may be cited as the "Direct Shipment of Vinous Liquor Act".

History. Acts 2013, No. 483, § 1.

3-5-1702. Definitions.

As used in this subchapter:

- (1) "Vinous liquor" means the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight; and
- (2) "Winery" means an establishment that makes vinous liquor.

History. Acts 2013, No. 483, § 1.

3-5-1703. Registration — Renewal fee.

(a) Unless registered under this subchapter, a winery licensed by this state or the state where its principal place of business is located shall not ship vinous liquor to an Arkansas consumer.

(b) Prior to the winery's first shipment into or within the state, the winery shall:

(1) Register with the Alcoholic Beverage Control Division;

(2) Provide the division with a copy of the winery's current license to manufacture wine issued by:

(A) The state of domicile; and

(B) The Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(3) Pay a registration fee of twenty-five dollars (\$25.00).

(c) A winery shall renew its application each year with the division by:

(1) Providing the division with a copy of the licenses required under subdivision (b)(2) of this section; and

(2) Paying a renewal fee of twenty-five dollars (\$25.00).

History. Acts 2013, No. 483, § 1.

3-5-1704. Purchase — Payment of taxes.

(a) A consumer must:

(1) Be physically present at the winery to purchase the vinous liquor to be shipped into or within the state; and

(2) Provide identification to the winery proving that he or she is twenty-one (21) years of age or older.

(b)(1)(A) A winery shall collect all sales taxes and excise taxes due on a sale to an individual of this state as if the sale took place on the premises of an Arkansas small farm winery, including without limitation taxes under §§ 3-5-1605, 3-7-104, 3-7-201, and 3-7-111.

(B) A winery does not have to collect a local tax that would be imposed by a municipality, town, or other political subdivision of the state.

(2) Taxes collected by the winery shall be submitted to the Department of Finance and Administration as directed without limitation under §§ 3-5-1605, 3-7-104, 3-7-201, and 3-7-111.

History. Acts 2013, No. 483, § 1.

3-5-1705. Direct shipment.

(a) A winery shall ship only a vinous liquor to a private residence.

(b) A winery may only ship one (1) case of vinous liquor per consumer in any calendar quarter.

(c)(1) A shipment of a vinous liquor shall have a shipping label provided by the Alcoholic Beverage Control Division affixed to the shipping package.

(2) The fee for each label for a shipment shall not exceed ten dollars (\$10.00).

History. Acts 2013, No. 483, § 1.

3-5-1706. Delivery.

A winery shall have the vinous liquor delivered to an Arkansas consumer during the hours of the day that alcoholic beverages may be purchased in the state.

History. Acts 2013, No. 483, § 1.

3-5-1707. Rules.

The Director of the Alcoholic Beverage Control Division, the Alcoholic Beverage Control Board, the Director of the Department of Finance and Administration, and any other affected agency of this state may adopt rules to implement this subchapter.

History. Acts 2013, No. 483, § 1.

3-5-1708. Disposition of funds.

(a) Permit fees or taxes, label fees, penalties, fines, proceeds of all forfeitures, special inspection fees, and costs received by the Director of the Department of Finance and Administration under this subchapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer those revenues to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 2013, No. 483, § 1.

CHAPTER 7

EXCISE TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SPECIAL RETAIL TAX.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 3-7-111. Additional taxes.

Effective Dates. Acts 2009, No. 294, § 30; Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address vio-

lations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-7-111. Additional taxes.

(a)(1) In addition to all other fees and taxes now imposed by law, there are levied and shall be collected the following additional fees and taxes:

(A) An additional tax of five cents (5¢) per case on each case of native wine produced and sold in this state, including light wines, wine coolers, and any other mixture containing the fermented juices of grapes, berries, fruits, or vegetables regardless of the percentage of alcoholic content, the tax to be paid by the manufacturer of the wine;

(B) A consumer enforcement tax of twenty-five cents (25¢) per thirty-two-gallon barrel of beer that may be passed on by the retailer to the consumer or may be absorbed by the retailer, the tax to be collected by the beer wholesalers acting as agent for the state;

(C) In addition to the fee imposed for the privilege of operating a dispensary under § 3-4-604, an additional fee of four hundred fifty dollars (\$450) for the issuance of each permit; and

(D) In addition to the permit fee now imposed under § 3-4-605 for the privilege of storing, transporting, and selling at wholesale spirituous, vinous, or malt liquors, an additional tax of nine thousand three hundred dollars (\$9,300).

(2) All additional permit fees and taxes imposed under subdivisions (a)(1)(B)-(D) of this section shall be levied and collected in the same manner as now provided by law.

(3) The tax imposed by subdivision (a)(1)(A) of this section shall be reported monthly by the manufacturer on all sales made in the State of Arkansas to Arkansas wholesalers, retailers, or consumers, and the manufacturer shall remit the tax with each report.

(4) All additional permit fees and taxes levied by subdivisions (a)(1)(A)-(D) of this section shall be deposited into the State Treasury as general revenues and credited to the State Apportionment Fund. These amounts shall be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and shall be used for the

respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(b)(1) There are levied and there shall be collected as provided by law and regulation:

(A) A tax at the rate of twenty cents (20¢) per case on liquor, cordials, liqueurs, premixed spirituous liquors, and specialties having an alcoholic content of twenty-one percent (21%) or more by weight;

(B) A tax at the rate of five cents (5¢) per case on liquor, cordials, liqueurs, premixed spirituous liquors, light spirituous liquors, and specialties having an alcoholic content of less than twenty-one percent (21%) alcohol by weight; and

(C) A tax at the rate of five cents (5¢) per case on sparkling and still wines, including light wines, regardless of alcoholic content.

(2) These taxes shall be paid by the wholesaler and shall not be passed on by the wholesaler to the retailer or the public. These taxes shall be paid on all such merchandise sold or offered for sale in the State of Arkansas and shall be in addition to any and all other taxes heretofore or hereafter levied and collected on that merchandise.

(3) All taxes, penalties, fines, and costs received by the Director of the Department of Finance and Administration under the provisions of this subsection shall be deposited into the State Treasury as general revenues to the credit of the State Apportionment Fund. There those amounts shall be allocated to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and shall be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(4) Any person who violates any of the provisions of this subsection shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1949, No. 282, §§ 13, 15; 1949, No. 282, § 14, as added by 1953, No. 118, § 36(B), as added by 1971, No. 585, § 12; 1953, No. 385, § 1; 1969, No. 271, § 1; 1969, No. 271, § 2, as added by 1953, No. 118, § 36(C), as added by 1971, No. 585, § 12; A.S.A. 1947, §§ 48-418, 48-419, 48-1213 — 48-1215; Acts 1987, No. 424, §§ 7, 8; 2005, No. 1994, § 33; 2009, No. 294, § 19.

A.C.R.C. Notes. Acts 2009, No. 294,

§ 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011 renewal and new permit period."

Amendments. The 2009 amendment, in (a)(1), substituted "four hundred fifty dollars (\$450)" for "one hundred dollars (\$100)" in (a)(1)(C), and substituted "nine thousand three hundred dollars (\$9,300)" for "three hundred dollars (\$300)" in (a)(1)(D).

SUBCHAPTER 2 — SPECIAL RETAIL TAX

SECTION.

3-7-201. Tax imposed — Collection.

3-7-201. Tax imposed — Collection.

(a)(1) There is levied a special alcoholic beverage excise tax of three percent (3%) upon all retail receipts or proceeds derived from the sale of liquor, cordials, liqueurs, specialties, and sparkling and still wines. The tax shall be and is in addition to all other taxes now imposed and cumulative to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) Native wine sold at retail in this state shall be subject to the special alcoholic beverage excise tax levied upon all retail receipts or proceeds derived from the sale of liquor, cordials, liqueurs, specialties, and sparkling and still wines under the provisions of this section.

(b) It shall be the duty of every retailer in this state to collect the tax from the consumer in addition to the established retail price of beer, liquor, cordials, liqueurs, specialties, and sparkling and still wines and to file a return and remittance with the Director of the Department of Finance and Administration on or before the twentieth day of each calendar month for the preceding month.

(c) Failure to file the return and remittance on the due date shall be cause for the director to enter an assessment for the return and remittance and add as a penalty ten percent (10%) of the amount of tax found to be due.

(d) Returns shall be filed upon forms prescribed by the director in accordance with such regulations as the director may promulgate hereunder.

(e) The State Board of Education and the Department of Education shall fully budget, fund, and expend or commit to expend the general revenue replacing the revenue derived from the previously imposed special alcoholic beverage excise tax on beer in addition to any other funding provided by law for essential programs such as subsidized child care for low-income families, the Arkansas Better Chance Program, and the Child Care and Early Childhood Education Fund Account in an amount equal to the appropriation level for the Arkansas Better Chance Program.

(f)(1) There is levied a special alcoholic beverage excise tax of one percent (1%) upon all retail receipts or proceeds derived from the sale of beer.

(2) The revenues derived from the excise tax on beer levied under subdivision (f)(1) of this section shall be deposited into the General Revenue Fund Account of the State Apportionment Fund to be distributed as general revenue.

History. Acts 1951, No. 252, § 3; 1953, No. 118, § 32(D); 1985, No. 1052, § 3; A.S.A. 1947, §§ 48-411, 48-608.2; Acts 2001, No. 1841, § 1; 2003, No. 272, § 1; 2005, No. 2188, § 1; 2007, No. 869, § 1; 2011, No. 982, § 2.

Amendments. The 2011 amendment deleted former (a)(3); deleted former (e)

through (e)(4)(A) and redesignated former (e)(4)(B) as (e); in present (e), deleted “After June 30, 2007” at the beginning, and “replacement” following “expend the,” inserted “replacing the revenue derived from the previously imposed special alcoholic beverage excise tax on beer” and the last occurrence of “Arkansas”; and deleted

"Beginning July 1, 2007" at the beginning
of (f)(1).

CHAPTER 8

LOCAL OPTION

SUBCHAPTER.

2. PROCEEDINGS PURSUANT TO INITIATED ACT.
3. PROCEEDINGS PURSUANT TO 1935 ACT.
5. PETITION FOR LOCAL OPTION ELECTIONS.
6. LOCAL OPTION ELECTIONS.
7. DISCLOSURE ACT FOR INITIATIVE PROCEEDINGS.
8. PAID CANVASSERS.

SUBCHAPTER 2 — PROCEEDINGS PURSUANT TO INITIATED ACT

SECTION.

3-8-204. [Repealed.]

3-8-205. Determination of sufficiency of petition — Calling of election.

3-8-204. [Repealed.]

Publisher's Notes. This section, concerning petition procedure, was repealed by Acts 2013, No. 1432, § 1. The section was derived from Acts 1977, No. 341, §§ 1-3; A.S.A. 1947, §§ 48-801.1 — 48-801.3; Acts 1997, No. 449, § 1.

3-8-205. Determination of sufficiency of petition — Calling of election.

(a)(1) When thirty-eight percent (38%) of the qualified electors shall file petitions with the county clerk of any county within this state praying that an election be held in a designated county, township, municipality, ward, or precinct to determine whether or not licenses shall be granted for the manufacture or sale or the bartering, loaning, or giving away of intoxicating liquor within the designated territory, the county clerk within ten (10) days thereafter shall determine the sufficiency of the petition.

(2) The total number of voters registered as certified by the county clerk to the Secretary of State by the first of June of each year pursuant to Arkansas Constitution, Amendment 51, shall be the basis upon which the number of signatures of qualified electors on petitions shall be computed.

(3) A person shall be a registered voter at the time of signing the petition.

(b) If it is found that thirty-eight percent (38%) of the qualified electors have signed the petition, the county clerk shall certify that finding to the county board of election commissioners, and the question shall be placed on the ballot in the county, township, municipality, ward, or precinct at the next biennial general election as provided in § 3-8-101.

(c)(1) If an appeal is taken from the certification of the county clerk, it shall be taken within ten (10) days and shall be considered by the circuit court within ten (10) days, or as soon as practicable, after the appeal is lodged with the court.

(2) The circuit court shall render its decision within thirty (30) days thereafter.

(d) If an appeal is taken, the election shall be had no sooner than sixty-five (65) days after the appeal is determined, if the decision is in favor of the petitioners.

(e)(1)(A) The decision shall be certified immediately to the county board of election commissioners, and the day for the election shall be fixed by the county board of election commissioners for not earlier than sixty-five (65) days nor later than ninety (90) days after the certification of the decision of the circuit court.

(B) Any appeal from the final decision of the circuit court shall be taken within ten (10) days and shall be advanced and immediately determined by the Supreme Court.

(2) In that event, the county board of election commissioners may, in its discretion, delay the election until after the final decision of the Supreme Court.

(3) If the decision is in favor of the petitioners, then the county board of election commissioners shall set the day for the election, which shall be not earlier than sixty-five (65) days nor later than ninety (90) days after the final decision of the Supreme Court.

(f) Except as provided in this section, a petition for local option election shall be governed by § 7-9-101 et seq. and the Disclosure Act for Initiative Proceedings, § 3-8-701 et seq.

History. Init. Meas. 1942, No. 1, §§ 1, 4, Acts 1943, p. 998; Acts 1985, No. 266, § 1; A.S.A. 1947, §§ 48-801, 48-804; Acts 1993, No. 243, § 1; 1997, No. 449, § 2; 1999, No. 637, § 1; 2007, No. 1049, § 2; 2013, No. 1432, § 2.

Amendments. The 2013 amendment added (f).

SUBCHAPTER 3 — PROCEEDINGS PURSUANT TO 1935 ACT

SECTION.

3-8-302. [Repealed.]

3-8-304. [Repealed.]

SECTION.

3-8-317. Wholesale of intoxicating liquor in prohibited territory.

3-8-302. [Repealed.]

Publisher's Notes. This section, concerning petition and order for election, was repealed by Acts 2013, No. 1432, § 3.

The section was derived from Acts 1935, No. 108, Art. 7, § 1; Pope's Dig., § 14147; A.S.A. 1947, § 48-807.

3-8-304. [Repealed.]

Publisher's Notes. This section, concerning notice and conduct of election, was repealed by Acts 2013, No. 1432, § 4. The

section was derived from Acts 1935, No. 108, Art. 7, § 2; Pope's Dig., § 14148; A.S.A. 1947, § 48-808.

3-8-306. Certificate of election results.**RESEARCH REFERENCES**

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

3-8-309. Contests of elections.**RESEARCH REFERENCES**

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

3-8-317. Wholesale of intoxicating liquor in prohibited territory.

(a)(1) It shall be unlawful to sell by wholesale any spirituous, vinous, malt, or other intoxicating liquor, regardless of the name by which it is called, except manufacturers selling liquor of their own make at the place of manufacture to a wholesale dealer or a licensed retail dealer, in any county, city, town, district, or precinct where the sale of liquor has been prohibited by vote of the people under the local option law.

(2)(A) A licensed wholesaler may maintain an alcoholic beverage storage facility in a county, city, town, district, or precinct where the sale of liquor has been prohibited when the storage facility is located in the same county as the wholesaler's licensed distributorship.

(B) A storage facility permitted under subdivision (a)(2)(A) of this section is subject to inspection and approval of the Alcoholic Beverage Control Division.

(b) Any person violating this act shall be deemed guilty of violating the local option law and shall be subject to trial and punishment according to the provisions of the local option law and its amendments.

History. Acts 1935, No. 108, Art. 7, § 8; Pope's Dig., § 14154; A.S.A. 1947, § 48-814; Acts 2013, No. 305, § 1.

Amendments. The 2013 amendment added (a)(2).

SUBCHAPTER 5 — PETITION FOR LOCAL OPTION ELECTIONS**SECTION.**

3-8-502. Local option elections in certain annexed areas.

3-8-502. Local option elections in certain annexed areas.

(a)(1)(A) If an area meets the qualifications provided in subdivision (a)(1)(B) of this section, the residents of the area may petition the county clerk of the county for a local option election to determine whether off-premises retail beer permits and off-premises Arkansas native wine retail permits shall be issued within the annexed area.

(B) An area qualifies to hold a local option election under this subchapter if:

(i) The area has been annexed from a dry township into a wet contiguous and adjoining city or incorporated town;

(ii) The annexed area is separated from the remainder of the dry township by a four-lane divided highway; and

(iii) A nonbinding election was held between November 1, 2004, and January 1, 2005, in the annexed area on the issue of whether intoxicating liquors may be manufactured, sold, bartered, loaned, or given away within the annexed area.

(2) The petition requesting a local option election shall be prepared in the manner provided by § 3-8-205.

(3)(A) When thirty-eight percent (38%) of the qualified electors of the annexed area, as shown on county voter registration records, sign a petition requesting a local option election, the county clerk shall determine the sufficiency of the petition within ten (10) days of the filing of the petition.

(B) If the county clerk verifies that thirty-eight percent (38%) of the qualified electors of the annexed area have signed the petition, the county clerk shall certify that finding to the county board of election commissioners.

(C) The question shall be placed upon the ballot in the annexed area at the next biennial November general election, as provided in § 3-8-101.

(D) Any appeal of the order of the county court shall be taken in the manner provided by § 3-8-205(c)-(e).

(4)(A) The election shall be conducted in the manner provided by § 3-8-206(a) and (b).

(B) Upon petition of fifteen percent (15%) of the interested legal voters in the annexed area, within ten (10) days after the date of the election, the county board of election commissioners shall immediately recount the votes and declare the result of the election as determined by the recount.

(C) Within twenty (20) days after the election, the county court shall make and enter of record its order declaring the result of the election.

(D) The costs of any elections held under this subchapter shall be paid by the county in the same manner as other costs of general elections.

(5) Upon petition of fifteen percent (15%) of the interested legal voters in the annexed area filed with the circuit clerk of the county in which proceedings are pending, the circuit court shall immediately by mandamus compel the county court or other officials to perform the duties imposed upon them under this section.

(b)(1) If, at the local option election, a majority of the electors of the annexed area vote for the issuance of off-premises retail beer permits and off-premises Arkansas native wine retail permits within the annexed area, the Director of the Alcoholic Beverage Control Division may issue off-premises retail beer permits and off-premises Arkansas native wine retail permits within the annexed area.

(2) If a majority of the electors of the annexed area vote against the issuance of off-premises retail beer permits and off-premises Arkansas native wine retail permits, it shall be unlawful for the director or any county or municipal officer to issue any off-premises retail beer permit or off-premises Arkansas native wine retail permit until the prohibition shall be repealed by a majority vote as provided in this section.

(3) At least four (4) years shall elapse before another local option election may be held in the annexed area.

(c) Except as provided in this section, a petition for local option election shall be governed by § 7-9-101 et seq. and § 3-8-801 et seq.

History. Acts 2005, No. 1258, § 1; substituted “3-8-205” for “3-8-204” in 2013, No. 1432, §§ 5, 6.

Amendments. The 2013 amendment

SUBCHAPTER 6 — LOCAL OPTION ELECTIONS

SECTION.

3-8-601. Definitions.

3-8-602. Local option election — Defunct voting district.

Effective Dates. Acts 2013, No. 1018, § 2: Apr. 9, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the ability of a territorial subdivision located in a defunct voting district to permit the sale of alcoholic beverages would improve the economic status of local businesses. Therefore, an emergency is declared to exist, and this act being imme-

dately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

3-8-601. Definitions.

As used in this subchapter:

(1) “Beer” means a fermented liquor made from malt or a malt substitute and containing not more than five percent (5%) alcohol by weight;

(2) “Defunct voting district” means a voting district that:

(A) Existed at the time its qualified voters voted to be dry;

(B) Is no longer recognized by the state or the county in which it was located; and

(C) Is currently located in a wet county;

(3) “Dry” means a county or territorial subdivision that voted to prohibit the manufacture or sale of intoxicating liquor under Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 —

3-8-209, or §§ 3-8-302 [repealed], 3-8-303, 3-8-304 [repealed], and 3-8-305 — 3-8-306;

(4) "Malt beverage" means a liquor brewed from the fermented juices of grain and having an alcoholic content of not less than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight;

(5) "Spirituos liquor" means a liquor distilled from the fermented juices of grain, fruits, or vegetables and containing more than twenty-one percent (21%) alcohol by weight or any other liquids containing more than twenty-one percent (21%) alcohol by weight;

(6) "Territorial subdivision" means a township, municipality, ward, or precinct of a county of the state;

(7) "Vinous beverage" means the fermented juices of fruits or a mixture containing the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) alcohol by weight;

(8) "Voting district" means a geographical area of qualified voters of a county in this state; and

(9) "Wet" means a county or territorial subdivision that voted to permit the manufacture or sale of intoxicating liquor under Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, or §§ 3-8-302 [repealed], 3-8-303, 3-8-304 [repealed], and 3-8-305 — 3-8-306.

History. Acts 2013, No. 1018, § 1.

3-8-602. Local option election — Defunct voting district.

(a)(1) Under subsection (b) of this section, an area within the boundaries of a defunct voting district may conduct an election to permit the manufacture and sale of alcoholic beverages identified in subdivision (a)(2) of this section.

(2) The manufacture and sale of alcoholic beverages under this section shall be limited to:

(A) Beer and vinous beverages for off-premises consumption; and

(B) Beer, malt beverages, vinous beverages, and spirituous liquor for on-premises consumption.

(b) An election for an area within the boundaries of a defunct voting district to permit the manufacture and sale of the alcoholic beverages identified in subdivision (a)(2) of this section shall be held as follows:

(1)(A) A registered voter who resides in a county that contains a defunct voting district may request in writing that the county board of election commissioners issue a resolution to identify the boundaries of a territorial subdivision located in a defunct voting district in which qualified voters may reside.

(B) The county board of election commissioners shall issue a resolution within thirty (30) days.

(C) The resolution shall identify the:

(i) Territorial subdivisions that are located wholly or partially within borders of any defunct voting districts in the county;

(ii) Formal and informal name or designation of any defunct voting districts in the county as of the last date the defunct voting district held the election resulting in its dry status;

(iii) Date on which any defunct voting district held the last local option election that resulted in the defunct voting district becoming dry; and

(iv)(a) Boundaries of any defunct voting district at the time of the last local option election that resulted in the defunct voting district becoming dry.

(b) The boundaries of the defunct voting district shall be based on state, county, or municipal records or other records publicly identified in the resolution.

(D) The resolution shall include a map of the boundaries of the defunct voting district from which qualified electors residing within the defunct voting district can be identified and verified for purposes of obtaining signatures and conducting the local option election.

(E) In preparing the resolution and the map, the county board of election commissioners may consult with the county clerk, the state board of election commissioners, the Secretary of State, or any other entity able to provide assistance in confirming the data and preparing the map required by subdivision (b)(1)(D) of this section and the precise boundaries of the defunct voting district.

(F) The resolution shall be filed with the county clerk and published once a week for two weeks as soon as practicable in a newspaper of general circulation in the county;

(2)(A) The petition procedure for a local option election for a defunct voting district shall be conducted pursuant to § 3-8-201 et seq.; and

(B) The signatures required under §§ 3-8-204 [repealed] and 3-8-205 for any defunct voting district shall be obtained from qualified electors residing within the boundaries of a defunct voting district, as identified by the resolution and corresponding map;

(3)(A)(i) The election process for a special local option election for a defunct voting district shall be conducted pursuant to § 3-8-201 et seq.

(ii) The county clerk shall issue a resolution calling for a special local option election for a defunct voting district for which the requisite number of signatures has been certified under subdivision (b)(2) of this section when:

(a) The requisite number of qualified electors sign petitions filed with the county clerk; and

(b) The county clerk certifies those signatures to the county board of election commissioners.

(iii) The resolution calling the special local option election shall be filed with the county clerk, and the county clerk shall immediately transmit the document to the county board of election commissioners.

(iv) The resolution calling the special local option election shall state:

(a) The date of the special election;

(b) The full text of the measure for which the election is called; and
(c) The ballot title for the measure for which the special local option election is called.

(v) The county board of election commissioners shall publish the resolution calling the special option election once a week for two (2) weeks as soon as practicable in a newspaper of general circulation in the county.

(B) The ballot title shall be in substantially the following form: "TO DETERMINE WHETHER OR NOT ALCOHOLIC BEVERAGES MAY BE SOLD OR MANUFACTURED AS AUTHORIZED BY ARKANSAS CODE § 3-8-602 WITHIN (popular name of the defunct voting district)".

(C) The ballot shall be in substantially the following form:

"[] FOR the Sale of Alcoholic Beverages, As Authorized by Arkansas Code § 3-8-602.

[] AGAINST the Sale of Alcoholic Beverages, As Authorized by Arkansas Code § 3-8-602."

(D) The special local option election shall be called on a Tuesday and shall not be held less than sixty (60) days following the date the resolution calling the special election is filed with the county clerk.

(E) The map of the defunct voting district created by the county board of election commissioners shall be placed at each polling site.

(F) A majority vote of the qualified electors residing within the boundaries of the defunct voting district shall determine whether or not alcoholic beverages may be sold or manufactured under subdivision (a)(2) of this section within the boundaries of the defunct voting district; and

(4) The precincts and polling sites to be utilized for conducting elections under this section shall be established by the county board of election commissioners.

(c) If a defunct voting district is located entirely within the boundaries of a larger defunct voting district, a vote shall be held only for the larger defunct voting district.

(d)(1) If two (2) defunct voting districts overlap, then the overlapping area will only be included in the boundaries of the defunct voting district that first held the local option election that resulted in its dry status to determine whether or not alcoholic beverages may be sold or manufactured under subdivision (a)(2) of this section.

(2)(A) The local option elections for more than one defunct voting district may be held simultaneously or on different dates.

(B) If local option elections for more than one (1) defunct voting district are held on the same date, the majority vote of all the voters residing within the boundaries of the defunct voting district shall determine the local option status of only the geographic area located within the boundaries of that particular defunct voting district.

(e) If the majority of the qualified voters in the special local option election vote:

(1) For the sale or manufacture of alcoholic beverages as described under subdivision (a)(2) of this section, then it shall be lawful for the

Director of the Alcoholic Beverage Control Division to issue the relevant licenses or permits within the defunct voting district immediately after the certification of the results of an election permitting the sale or manufacture of alcoholic beverages under this section, as required by § 3-8-206; or

(2) Against the sale or manufacture of alcoholic beverages as described under subdivision (a)(2) of this section, then it shall be unlawful for the division to issue licenses or permits for such sale or manufacture within the defunct voting district.

(f) A subsequent election under this section shall not be held in the same defunct voting district until a period of two (2) years has elapsed since the last special local option election conducted under this section.

(g) The cost of a local option election under this section shall be paid by the county in the same manner as the cost of a general election, or in any other manner as properly determined by the quorum court.

(h)(1) The boundaries of a defunct voting district as identified by the county board of election commissioners under subsection (b)(1) of this section shall be deemed final and valid unless clearly erroneous or arbitrary.

(2) Any challenge to or appeal of the boundaries established by the resolution of the county board of election commissioners shall be made to the county court within eleven (11) days of the first publication of the resolution described in subdivision (b)(1)(F) of this section.

(i) To the extent any of the provisions of this section conflict with § 3-8-201 et seq., the provisions of this section control.

History. Acts 2013, No. 1018, § 1.

SUBCHAPTER 7 — DISCLOSURE ACT FOR INITIATIVE PROCEEDINGS

SECTION.

- 3-8-701. Title.
- 3-8-702. Definitions.
- 3-8-703. Filing deadlines.
- 3-8-704. Contributions and expenditures limited.
- 3-8-705. Financial reports — Requirement.
- 3-8-706. Financial report — Information.
- 3-8-707. Financial reports — Verification.
- 3-8-708. Financial reports — Time to file — Late fee.
- 3-8-709. Public inspection — Record retention.

SECTION.

- 3-8-710. Enforcement.
- 3-8-711. Reporting the use of state funds to oppose or support a ballot measure.
- 3-8-712. Use of state funds to oppose or support a local-option ballot measure.
- 3-8-713. Applicability of §§ 3-8-711 and 3-8-712.
- 3-8-714. Scope.
- 3-8-715. Penalty.

3-8-701. Title.

This subchapter shall be known and may be cited as the "Disclosure Act for Initiative Proceedings".

History. Acts 2013, No. 1432, § 7.

3-8-702. Definitions.

As used in this subchapter:

(1)(A) "Contribution" means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payments for services, dues, advancements, forbearance, loans, pledges, or promises of money or anything of value, whether or not legally enforceable, to a person for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events and the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all persons for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(C) "Contribution" does not include:

(i) Noncompensated, nonreimbursed volunteer personal services or travel;

(ii) Activities designed solely to encourage individuals to vote or to register to vote; or

(iii) Any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination;

(2) "Disqualification of a local-option ballot question" means any action or process, legal or otherwise, that seeks to prevent a local-option ballot question from being on the ballot at an election;

(3)(A) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) "Expenditure" does not include an expenditure made for communication by a person strictly with the person's paid members or shareholders;

(4) "Local-option ballot question" means a question in the form of a local-option initiative that is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot;

(5)(A) "Local-option ballot question committee" means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question or any person, other than a public servant, a governmental body expending public funds, or an individual, located within or outside Arkansas, that makes expenditures for the purpose of expressly advocating the

qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a local-option ballot question committee if two percent (2%) or more of the committee's annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(6)(A) "Person" means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" includes a public servant or governmental body using public funds to expressly advocate the qualification, disqualification, passage, or defeat of a local-option ballot question; and

(7) "Qualification of a local-option ballot question" means any action or process, legal or otherwise, through which a local-option ballot question obtains certification to be on the ballot at an election.

History. Acts 2013, No. 1432, § 7.

3-8-703. Filing deadlines.

(a)(1)(A) A local-option ballot question committee shall file a Ballot Question Committee Statement of Organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, passage, or defeat of a local-option ballot question.

(B) The commission shall maintain the statement of organization until notified of the committee's dissolution.

(2) A local-option ballot question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not to exceed fifty dollars (\$50.00) for each day the statement remains not filed.

(b) The statement of organization shall include the information required by the statement of organization form prescribed by the Executive Director of the Arkansas Ethics Commission, and any further information the director may by regulation require.

(c) Rules regarding dissolution shall be governed by the rule of the commission.

History. Acts 2013, No. 1432, § 7.

3-8-704. Contributions and expenditures limited.

(a) No local-option ballot question committee shall accept any contribution in cash, meaning currency or coin, that exceeds one hundred dollars (\$100).

(b) No local-option ballot question committee shall accept any contribution from a prohibited political action committee as defined in § 7-6-201.

(c) No local-option ballot question committee or individual shall make an expenditure in cash that exceeds fifty dollars (\$50.00) to influence the qualification, disqualification, passage, or defeat of a local-option ballot question.

(d) No contributions shall be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(e)(1) No person shall make an anonymous contribution totaling fifty dollars (\$50.00) or more to a local-option ballot question committee.

(2) Any anonymous contribution actually received by a local-option ballot question committee shall be promptly paid by the recipient to the Secretary of State for deposit into the State Treasury as general revenues.

History. Acts 2013, No. 1432, § 7.

3-8-705. Financial reports — Requirement.

(a) A local-option ballot question committee that either receives contributions or makes expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the Arkansas Ethics Commission a Ballot Question Committee Financial Report as required by §§ 7-9-407 — 7-9-409.

(b) A public servant or governmental body expending public funds in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the commission financial reports as required by §§ 7-9-407 — 7-9-409.

(c) Except as provided in subsection (d) of this section, a report required by this subchapter shall be deemed timely filed if it is:

(1) Hand-delivered to the commission on or before the date due;

(2) Mailed to the commission, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;

(3) Received via facsimile by the commission on or before the date due, provided that the original is received by the commission within ten (10) days of the transmission; or

(4) Received by the commission in a readable electronic format that is approved by the commission.

(d) Whenever a report under this subchapter becomes due on a day that is a Saturday, Sunday, or legal holiday, the report shall be due the next day that is not a Saturday, Sunday, or legal holiday.

(e) A preelection report is timely filed if it is received by the commission no later than seven (7) days prior to the election for which it is filed.

History. Acts 2013, No. 1432, § 7.

3-8-706. Financial report — Information.

In addition to the information required under §§ 7-9-407 — 7-9-409, a financial report of a local-option ballot question committee shall contain the following information:

(1) The name, address, and telephone number of the committee filing the report;

(2) For a local-option ballot question committee:

(A) The total amount of contributions received during the period covered by the financial report;

(B) The total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(C) The cumulative amount of contributions and expenditures reported under subdivision (2)(A) of this section for each local-option ballot question committee;

(D) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(E) The total amount of contributions received during the period covered by the financial report from persons who contributed less than fifty dollars (\$50.00) and the cumulative amount of that total for each local-option ballot question committee;

(F) The total amount of contributions received during the period covered by the financial report from persons who contributed fifty dollars (\$50.00) or more and the cumulative amount of that total for each local-option ballot question committee;

(G) The name and street address of each person who contributed fifty dollars (\$50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each local-option ballot question committee;

(H) For each person listed under subdivision (2)(A) of this section, the contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the local-option ballot question committee, and the cumulative amount contributed for each local-option ballot question;

(I) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(J) A list of all paid canvassers, officers, and directors and the amount each person was paid;

(K) A list of all expenditures by category, including without limitation the following:

- (i) Advertising;
- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Travel;
- (v) Expenses; and
- (vi) Telephone; and

(L) The total amount of nonitemized expenditures made during the period covered by the financial report; and

(3) The name and street address of each person to whom reimbursement for expenditures totaling one hundred dollars (\$100) or more was made, together with the date and amount of each separate reimbursement to each person during the period covered by the financial report and the purpose of each expenditure.

History. Acts 2013, No. 1432, § 7.

3-8-707. Financial reports — Verification.

The financial reports identified in § 3-8-706 shall be verified by affidavit by the person filing them to the effect that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of contributions or expenditures.

History. Acts 2013, No. 1432, § 7.

3-8-708. Financial reports — Time to file — Late fee.

(a)(1) The first financial reports shall be filed no later than fifteen (15) days following the month in which the threshold of five hundred dollars (\$500) under § 3-8-706 is met and thereafter no later than fifteen (15) days after the end of each month until the election is held. However, for any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report.

(2) Additionally, a preelection financial report shall be filed no less than seven (7) days prior to any election on the ballot question or legislative question, such statement to have a closing date of ten (10) days prior to the election.

(3) Furthermore, a final financial report shall be filed no later than thirty (30) days after the election.

(b) A local-option ballot question committee or individual person who files a late financial report shall be subject to a late filing fee not to exceed fifty dollars (\$50.00) for each day the report remains unfiled.

History. Acts 2013, No. 1432, § 7.

3-8-709. Public inspection — Record retention.

(a) All statements of organization and financial reports required by this subchapter shall be open to public inspection at the office of the Arkansas Ethics Commission during regular office hours.

(b) All records supporting the reports filed under this subchapter shall be:

- (1) Made available to the commission; and
- (2) Retained by the filer for a period of four (4) years after the date of filing the report.

History. Acts 2013, No. 1432, § 7.

3-8-710. Enforcement.

The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of this subchapter as are provided the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign finance laws.

History. Acts 2013, No. 1432, § 7.

3-8-711. Reporting the use of state funds to oppose or support a ballot measure.

Any funds appropriated to any state agency, board, or commission that are expended, as prescribed in § 7-9-413, for the purpose of opposing or supporting a local-option ballot question that is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot, shall be reported to the Legislative Council if the amount exceeds one hundred dollars (\$100).

History. Acts 2013, No. 1432, § 7.

3-8-712. Use of state funds to oppose or support a local-option ballot measure.

The use of state funds under this subchapter includes expenditures for:

- (1) Newspaper, television, radio, and other forms of communication;
- (2) Publication materials;
- (3) Travel expenses relative to reimbursement;
- (4) Surveys;
- (5) Private contracts; and
- (6) Postage.

History. Acts 2013, No. 1432, § 7.

3-8-713. Applicability of §§ 3-8-711 and 3-8-712.

This subchapter does not apply to state funds appropriated to any elected officials.

History. Acts 2013, No. 1432, § 7.

3-8-714. Scope.

Nothing in this subchapter may limit, waive, or abrogate the scope of any statutory or common law privilege, including, but not limited to, the work product doctrine and the attorney-client privilege.

History. Acts 2013, No. 1432, § 7.

3-8-715. Penalty.

Upon conviction, any person who knowingly fails to comply with this subchapter shall be fined an amount not to exceed one thousand dollars (\$1,000) or be imprisoned for not more than one (1) year, or both.

History. Acts 2013, No. 1432, § 7.

SUBCHAPTER 8 — PAID CANVASSERS**SECTION.**

3-8-801. Definitions.

3-8-802. Hiring and training of paid canvassers.

3-8-801. Definitions.

As used in this subchapter:

(1) “Canvasser” means a person who circulates a local option election petition or a part or parts of a local option election petition to obtain the signatures of petitioners thereto;

(2) “Paid canvasser” means a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on a local option election petition is solicited in exchange for soliciting or obtaining a signature on a petition;

(3) “Petitioner” means a person who signs a petition requesting a local option election; and

(4) “Sponsor” means a person who arranges for the circulation of a local option election petition or who files a local option election petition with the official charged with verifying the signatures.

History. Acts 2013, No. 1432, § 8.

3-8-802. Hiring and training of paid canvassers.

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a local option election

petition unless the person receiving the money or item of value meets the requirements of this section.

(2) Before a signature is solicited by a paid canvasser, the sponsor shall:

(A) Provide the paid canvasser with a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook;

(B) Explain the Arkansas law applicable to obtaining signatures on a local option election petition to the canvasser; and

(C)(i) Provide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

(ii) If additional paid canvassers agree to solicit signatures on behalf of a sponsor after the complete list is provided, the sponsor shall provide an updated list of all paid canvassers' names and current residential addresses to the Secretary of State.

(b) Before obtaining a signature on a local option election petition as a paid canvasser, a person shall submit in person or by mail to the sponsor:

(1) The full name and any assumed name of the person;

(2) The current residence address of the person and the person's permanent domicile address if the person's permanent domicile address is different from the person's current residence address;

(3) A signed statement taken under oath or solemn affirmation that states that the person has not pleaded guilty or nolo contendere to or been found guilty of a criminal offense involving a violation of the election laws, fraud, forgery, or identification theft in any state;

(4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on a local option election petition;

(5) A signed statement that the person has been provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook by the sponsor; and

(6) A photograph of the person taken within ninety (90) days of the submission of the information required under this section.

(c) A sponsor shall maintain the information required under this section for each paid canvasser for three (3) years after the general election.

History. Acts 2013, No. 1432, § 8.

CHAPTER 9

ON-PREMISES CONSUMPTION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ALCOHOLIC BEVERAGES GENERALLY.
3. WINE.
4. SUNDAY SALES [REPEALED.]
5. SUNDAY BEER AND WINE PERMIT [REPEALED.]
6. WINE AND BEER ON-PREMISES LICENSE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-9-102. Posting of warning signs relating to drinking alcoholic

beverages during pregnancy.

3-9-102. Posting of warning signs relating to drinking alcoholic beverages during pregnancy.

(a)(1) A person who has received a permit under the law of this state for the sale or dispensing of alcoholic beverages, beer, or wine for on-premises consumption in a private club that does not hold itself out to be a food service establishment shall post in a conspicuous place a printed sign at least eight and one-half inches by eleven inches (8 1/2" x 11") in size with letters at least one inch (1") high that reads "Warning: Drinking alcoholic beverages during pregnancy may cause birth defects".

(2) The poster shall be printed in English, Spanish, and any other language mandated by the Voting Rights Act of 1965, 42 U.S.C. § 1973, as it existed on January 1, 2013, in the county where the poster will be posted.

(b)(1) The Alcoholic Beverage Control Board shall make a sign meeting the requirements of this section available to a person who has received a permit under the law of this state for the sale or dispensing of alcoholic beverages, beer, or wine for on-premises consumption in a private club that does not hold itself out to be a food service establishment.

(2) The sign shall be available on the website of the Alcoholic Beverage Control Division where documents associated with obtaining a liquor license or alcoholic beverage license are customarily located.

(3) To obtain a copy of the sign required to be posted under this section, the owners or operators of an establishment required to post the sign under this section shall:

(A) Print the poster from the website under subdivision (b)(3) of this section; or

(B) Request that the sign be mailed for the cost of printing and first-class postage.

(c)(1) If the board finds that the establishment has failed to post the information required under this section, the owner or operator shall receive:

(A) For a first violation, a warning; and

(B) For a second or subsequent violation, a fine not to exceed five hundred dollars (\$500).

(2) The violation of or noncompliance with this section and each day's continuance thereof shall constitute a separate and distinct violation.

(d) The board shall promulgate rules to implement this section.

(e) The board may enter into an interagency agreement with the Office of Alcohol and Drug Abuse Prevention regarding the funding necessary to implement this section.

History. Acts 2013, No. 1300, § 1.

SUBCHAPTER 2 — ALCOHOLIC BEVERAGES GENERALLY

SECTION.

- 3-9-202. Definitions.
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Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 763, § 6: Apr. 1, 2009. Emergency clause provided: "It is hereby found and determined that Act 294 of 2009 became effective, by emergency clause, on March 3, 2009, and that it has been found that there are some technical

corrections that need to be placed into immediate operation. It is further determined that these technical corrections are necessary to give full force and effect to the provisions of Act 294 of 2009 and that if this technical corrections bill is not passed with an emergency clause then unnecessary confusion concerning the provisions of Act 294 of 2009 may arise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1008, § 2: emergency failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that an affected city, county, or political subdivision needs to be permitted to begin converting the purpose of an alcoholic beverage permit during the renewal period to avoid additional costs and the interruption of business. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1100, § 5: Apr. 11, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the law regarding the definition of 'restaurant' is necessary to avoid ambiguity in state law and the Arkansas Beverage Control Division's rules. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-9-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic beverages" means all intoxicating liquors of any sort, other than beer and wine as described and regulated in §§ 3-5-301 — 3-5-307, and 3-9-301 et seq., respectively;

(2) "Bed and breakfast private club" means a corporation, partnership, individual, or limited liability corporation whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, where a breakfast meal is served to the lodging guest, and where no restaurant on the premises is open to the public except for the lodging guest;

(3) "Board" means the Alcoholic Beverage Control Board of this state, or its successor agency;

(4) "City" means any city of the first class or city of the second class in this state;

(5) "Director" means the Director of the Alcoholic Beverage Control Division;

(6) "Dry area" means any area in which the manufacture or sale of intoxicating liquor is prohibited by a local option election heretofore or hereafter held pursuant to the Initiated Act;

(7) "Guest" means a person who orders and is served a meal inside a restaurant during regular hours;

(8) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests, and having one (1) or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least fifty (50) persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation;

(9) "Initiated Act" means Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, which establishes the procedure for local option elections to prohibit the manufacture or sale of intoxicating liquor;

(10) "Large event facility" means a facility that houses convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and that either itself or through one (1) or more independent contractors complies with all of the following:

(A) Serves full and complete meals and food on the premises;

(B) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people; and

(C) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people;

(11) "Meal" means the usual assortment of food commonly ordered at various hours of the day;

(12) "On-premises consumption" means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold;

(13) "Person" means any natural person, partnership, association, or corporation;

(14)(A)(i) "Private club" means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club's operations, and which is conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other nonprofit object or purpose other than the consumption of alcoholic beverages.

(ii) The nonprofit corporation shall have been in existence for a period of not less than one (1) year before applying for a permit, as prescribed in this subchapter.

(iii) At the time of application for the permit, the nonprofit corporation must have not fewer than one hundred (100) members

and at the time of application must own or lease, be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and guests and restrict the use of club facilities to those persons.

(B) For purposes of this subdivision (14), a person shall be required to become a member of the private club in any wet area of the state only upon ordering an alcoholic beverage as defined under subdivision (1) of this section.

(C) Furthermore, where the business entity that holds a private club permit additionally holds a retail beer permit, retail wine for consumption on the premises permit, or cafe or restaurant wine permit, the hours of operation authorized for the private club shall likewise apply to all permits of the business entity;

(15) "Referendum election" means an election held as provided in this subchapter, at which the electors of a city or county shall vote on the question of authorizing, as provided herein, the sale of alcoholic beverages for on-premises consumption in those areas of the city or county in which the lawful sale of alcoholic beverages has not been prohibited by a local option election held pursuant to the Initiated Act; and

(16) "Restaurant" means any public or private place:

(A)(i) That is primarily engaged in the business of serving a meal for consumption on the premises to a guest and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division.

(ii) The menu shall contain a selection of food and shall not be limited to sandwiches or salads. .

(iii) The kitchen shall:

(a) Have adequate refrigeration to preserve the food on the menu;

(b) Be kept in a sanitary condition; and

(c) Comply with the regulations of the Department of Health; and

(iv) Food from the menu shall be available from opening time until two (2) hours before closing time; or

(B)(i) Which qualifies as a "large meeting or attendance facility", which is defined, without limitation, as a facility housing convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and which either itself or through one (1) or more independent contractors complies with all of the following:

(a) Actually serves full and complete meals and food on the premises;

(b) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people;

(c) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people; and

(d) Serves alcoholic beverages on the premises at one (1) or more places only on days that meals and food are served at one (1) or more places on the premises.

(ii)(a) Any on-premises restaurant permittee as licensed by subdivision (16)(A) of this section and any hotel or motel on-premises permittee as licensed by subdivision (8) of this section shall be allowed to serve alcoholic beverages purchased under its permit at any large meeting or attendance facility which is licensed under this subdivision (16)(B). Hotel, motel, and restaurant permittees may serve alcoholic beverages purchased under their permits only when they have first secured written permission from the permittee of the large meeting or attendance facility. Otherwise, alcoholic beverage service at the large meeting or attendance facility shall be from inventory purchased by the large meeting or attendance facility permittee.

(b) Written permission shall not be granted for more than a five-day period. The Alcoholic Beverage Control Division shall be given a copy of any such written agreement. Any violations which occur while such permission is being used shall lie against the hotel, motel, or restaurant using such permission.

(c) Any hotel, motel, or restaurant that serves its alcoholic beverages at a large meeting or attendance facility shall only do so pursuant to a satellite catering permit to be issued by the division for an annual fee of five hundred dollars (\$500) per fiscal year or part thereof. The permit shall be applied for on forms as prescribed by the board.

(d) The board shall promulgate such regulations as it deems necessary to implement subdivisions (16)(B)(ii)(a)-(c) of this section.

(iii) When a large attendance facilities permit has been issued to a government-owned facility located in a county that has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, Arkansas-licensed beer wholesalers shall be allowed to pay for advertising devices used at the government-owned facility. Such advertising devices shall include items such as inside or outside signs, scoreboards, programs, score-cards, and the like. Provided, if such advertising by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes such items, then such an exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesale beer permit involved even if the arrangements are caused by third parties. To the extent that § 3-5-214 or any other law could be interpreted to preclude such advertising arrangements allowed in this subdivision (16)(B)(iii), they are held inapplicable.

(iv)(a) When a large attendance facilities permit has been issued to a facility owned or operated by the owner of a professional sports team franchised by Minor League Baseball and within a county that

has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, the operator of the facility may accept sponsorship funds, advertising items, or promotional items from licensed beer wholesalers. Promotional items shall include items used by the facility to promote attendance.

(b) However, if the use of sponsorship funds, advertising items, or promotional items by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes the sponsorship funds, advertising items, or promotional items, then the exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesaler's wholesale beer permit even if the arrangements are caused by third parties.

(c) Section 3-5-214 or any other law that could be interpreted to preclude arrangements to use the sponsorship funds, advertising items, or promotional items allowed in this subdivision (16)(B)(iv) shall not apply to this subdivision (16)(B)(iv).

History. Acts 1969, No. 132, § 2; 1985, No. 384, § 1; A.S.A. 1947, § 48-1402; Acts 1989, No. 295, § 3; 1989, No. 837, § 1; 1989, No. 953, § 1; 1993, No. 403, § 2; 1995, No. 536, § 2; 1995, No. 600, § 1; 1999, No. 1063, § 1; 1999, No. 1371, § 1; 1999, No. 1597, § 1; 2003, No. 369, § 1; 2003, No. 1813, § 1; 2005, No. 445, § 1;

2007, No. 642, § 1; 2011, No. 1194, § 2; 2013, No. 1100, §§ 1, 2.

Amendments. The 2011 amendment added present (9).

The 2013 amendment redesignated and rewrote former (14) as (16); and inserted present (7) and (11) and redesignated the remaining subdivisions accordingly.

CASE NOTES

Private Clubs.

Approval of a private-club permit was proper because a club established that it had a nonprofit purpose other than the consumption of alcohol under subdivision (12)(A)(i) of this section where it operated in conjunction with a restaurant and was designed to enhance the dining experience. Moreover, the Arkansas Alcoholic

Beverage Control Division Board's interpretation of subdivision (12)(A)(i) was entitled to deference, and arguments relating to nonprofit status that were not fully developed before the Board were not preserved for appellate review. Barnes v. Ark. Dep't of Fin. & Admin., 2012 Ark. App. 237, — S.W.3d — (2012).

3-9-203. Applicability — Purpose and effect of referendum election.

(a) The provisions of this subchapter authorizing on-premises consumption shall be effective only in cities and counties, or portions thereof, in which the manufacture or sale of intoxicating liquor is not prohibited as a result of a local option election held pursuant to Initiated Act No. 1 of 1942, and in which the sale of alcoholic beverages for on-premises consumption has been approved by a majority vote at a referendum election as herein provided.

(b) A favorable vote at a referendum election shall authorize on-premises consumption in licensed premises, as provided in this sub-

chapter, in only those areas of the city or county which are not dry areas.

(c)(1) A referendum election held in a city shall be for the purpose of determining whether the sale of alcoholic beverages for on-premises consumption shall be authorized in the portions of the city in which the sale of alcoholic beverages is not otherwise prohibited by law.

(2) A referendum election held in a county shall be for the purpose of determining whether the sale of alcoholic beverages for on-premises consumption shall be authorized in all areas of the county, including cities of the first class and second class and incorporated towns therein, in which the sale of alcoholic beverages is not otherwise prohibited by law.

(d) A city or town may authorize by ordinance the sale of alcoholic beverages for on-premises consumption under this subchapter if:

(1) The city or town is located in a county that authorized the manufacture and sale of intoxicating liquor after November 1, 2012; and

(2) The county in which the city or town is located has one hundred (100) active Alcoholic Beverage Control Division permits at the time the city or town chooses to authorize on-premises consumption.

History. Acts 1969, No. 132, § 3; A.S.A. 1947, § 48-1403; **Amendments.** The 2013 amendment Acts 2013, No. 1008, § 1. added (d).

3-9-206. Referendum elections — Conduct.

(a) A referendum election hereunder shall be conducted in accordance with the following:

(1) A referendum election may be called in a city by resolution adopted by a majority vote of the governing body of the city or by petition filed with the city clerk signed by qualified electors of the city numbering not less than fifteen percent (15%) of the votes cast in the city for the office of Governor in the last general election in which the office appeared on the ballot;

(2) A referendum election may be called in a county by resolution adopted by a majority vote of the quorum court at any annual or special session thereof, or by petition filed with the county clerk signed by qualified electors of the county numbering not less than fifteen percent (15%) of the votes cast in the county for the office of Governor in the last general election in which the office appeared on the ballot.

(b)(1) The election shall be called by order of the quorum court in accordance with § 7-11-201 et seq. and held and conducted in accordance with § 7-11-201 et seq. and the results certified under the supervision of the county board of election commissioners in the manner provided by the election laws of this state.

(2) The order of the quorum court shall fix the date of the election not more than ninety (90) days from the date of the order and give notice thereof by publication in a newspaper of general circulation in the city

or county by at least two (2) insertions, the last being not less than ten (10) days prior to the election.

(3) The county board shall tabulate the votes and certify the results to the county clerk within ten (10) days after the election.

(c) The election shall be conducted on a citywide or countywide basis. All qualified electors within the city or county, as the case may be, shall be eligible to vote even though they reside in a dry area thereof.

(d) On the ballot for the election shall be printed substantially the following:

FOR THE SALE OF ALCOHOLIC BEVERAGES FOR
ON-PREMISES CONSUMPTION IN (NAME OF CITY
OR COUNTY), ARKANSAS, AS AUTHORIZED IN AR-
KANSAS CODE § 3-9-201 ET SEQ.

AGAINST THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISES CONSUMPTION IN (NAME OF
CITY OR COUNTY), ARKANSAS, AS AUTHORIZED IN
ARKANSAS CODE § 3-9-201 ET SEQ.

(e) The results of the election may be contested within the time and in the manner provided by law.

(f) All matters concerning the sufficiency of the petitions and the conduct of the election not specifically provided for herein shall be determined in accordance with the initiative and referendum laws of this state applicable to cities and counties, respectively.

History. Acts 1969, No. 132, § 4; A.S.A. 1947, § 48-1404; Acts 1997, No. 1010, § 5; 2005, No. 2145, § 2; 2009, No. 1480, § 2.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” twice in (b)(1).

3-9-212. Permit to sell beverages — Fees.

(a) Each application for a permit to sell alcoholic beverages for on-premises consumption shall be accompanied by a permit fee in the following applicable amount:

Hotel, having fewer than 100 rooms	\$ 750
Hotel, having 100 or more rooms	1,500
Restaurant, having a seating capacity of less than 100 persons	750
Restaurant, having a seating capacity of 100 or more persons	1,500
Large meeting or attendance facility as defined in § 3-9-202(16)(B)	2,500

(b) An annual renewal fee in the same amount as provided in subsection (a) of this section shall be paid to the Director of the

Alcoholic Beverage Control Division on or before June 30 of each calendar year for the fiscal year beginning July 1.

(c) The fee for a permit issued between January 1 and July 1 shall be one-half (½) of the applicable amount specified in subsection (a) of this section.

History. Acts 1969, No. 132, § 7; 1983, No. 420, § 1; A.S.A. 1947, §§ 48-313.1, 48-1407; Acts 2009, No. 294, § 20.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment, in (a), substituted "750" for "500" twice, substituted "1,500" for "1,000" twice, and inserted "Large meeting or attendance facility as defined in § 3-9-202(8)(B)" and "2,500."

3-9-215. Authorization of Sunday sales on December 31.

When a Sunday falls on December 31 of any year, licensed restaurants and hotels authorized to sell alcoholic beverage under § 3-3-210 may automatically sell alcoholic beverages for on-premises consumption between the hours of 10:00 a.m. on Sunday and 2:00 a.m. on the following Monday unless the city, town, or county establishes by ordinance a lesser period of time within which alcoholic beverages may be sold for on-premises consumption by the licensed restaurants and hotels.

History. Acts 1987, No. 115, §§ 1-3; 1995, No. 192, § 1; 1995, No. 563, §§ 1, 2; 1997, No. 1010, § 4; 1997, No. 1060, § 4; 2009, No. 294, § 21.

Amendments. The 2009 amendment deleted all the text of the section except

(b)(2), which was redesignated as (a), inserted "authorized to sell alcoholic beverage under § 3-3-210," substituted "10:00 a.m." for "12:00 noon," inserted "town," and made related and minor stylistic changes.

3-9-216. Authorization of sales for certain large attendance facilities and restaurants.

(a) A large attendance facility under § 3-9-202(16)(B) in which pari-mutuel wagering has been authorized and which has a valid and current license or permit to sell alcoholic beverages for on-premises consumption may sell alcoholic beverages for on-premises consumption on any day of the week during hours in which the large attendance facility is open for business except on:

- (1) Christmas Day under § 3-3-211; and
- (2)(A) Easter Sunday.

(B) However, the large attendance facility may sell alcoholic beverages on Easter Sunday between the hours of 12:00 midnight and 2:00 a.m.

(b) A restaurant under § 3-9-202(16)(A) may sell alcoholic beverages for on-premises consumption on Sundays between the hours of 12:00 midnight and 2:00 a.m. and on Sundays between the hours of 12:00 noon and 2:00 a.m. on the following Monday in addition to other times authorized by law for selling alcoholic beverages for on-premises consumption if the restaurant:

(1) Is located in the same city as a large attendance facility authorized to sell alcoholic beverages for on-premises consumption on Sundays under subsection (a) of this section; and

(2) Has a valid and current license or permit to sell alcoholic beverages for on-premises consumption.

(c) This section does not:

(1) Authorize the sale of alcoholic beverages in any city or county or in any portion of a city or county in which the sale of alcoholic beverages is prohibited by law; or

(2) Repeal or modify any law that prohibits the sale of intoxicating alcoholic liquor, beer, or wine on Sunday unless the law specifically conflicts with this section.

History. Acts 2007, No. 1017, § 2; 2009, No. 7, § 1; 2009, No. 790, § 1; 2011, No. 982, § 3.

Amendments. The 2009 amendment by No. 7 inserted (b), and redesignated the following subsection accordingly.

The 2009 amendment by No. 790 rewrote (a); and made a minor stylistic change in (c).

The 2011 amendment substituted “alcoholic beverages” for “liquor” in (b)(1).

3-9-221. Private clubs — Exception from alcoholic beverage laws.

(a) The General Assembly recognizes that:

(1) Many individuals in this state serve mixed drinks containing alcoholic beverages to their friends and guests in the privacy of their homes and, in addition, that many individuals associated together in private nonprofit corporations established for fraternal, patriotic, recreational, political, social, or other mutual purposes as authorized by law, established not for pecuniary gain, have provided for their mutual convenience and for the preparation and serving to themselves and their guests mixed drinks prepared from alcoholic beverages owned by the members individually or in common under a so-called “locker”, “pool”, or “revolving fund” system;

(2) Many individuals travel to this state to assemble at regional meetings and conventions to associate with other individuals who are members of professional and social organizations and that:

(A) Many of the restaurants and entertainment facilities used for the meetings and conventions promote the hospitality of the host communities where the restaurants, convention, and entertainment facilities are located;

(B) Many of the host organizations plan to serve mixed drinks containing alcoholic beverages to their friends and guests at these meetings and while entertaining and dining during these conventions; and

(C) Many of the host communities have individuals who have associated together in private nonprofit corporations established for recreational, social, community hospitality, professional association, entertainment, or other mutual purposes established, not for pecuniary gain, but for their mutual convenience and to provide for the

preparation and serving to themselves and their guests mixed drinks prepared from alcoholic beverages owned by the members individually or in common under a so-called locker, pool, or revolving fund system; and

(3)(A)(i) That there are a number of counties or parts of counties where the public retail sale of intoxicating liquors has not been approved by the voters.

(ii) However, within those counties or parts of counties there are significant developments of tourism facilities and large-event facilities that promote the economic development of the state.

(B) To ensure that tourism and large-event facilities as well as other associated activities are allowed to exist to promote the economic development in the state, a new hotel or large-event facility private club permit, for use in those places where the public retail sale of intoxicating liquors is not authorized, should be created.

(C) These permits are necessary so that persons visiting hotels or large-event facilities in these areas will be able to enjoy the amenities that a person might find in other states.

(D) This additional permit will enhance the experience of going to hotels or large-event facilities that may display items of historic interest, contain extensive art collections, or host musical or dramatic presentations.

(E)(i) Further, since the counties or parts of counties in which these hotels or large-event facilities will be located do not allow the open public retail sale of intoxicating liquors, the nonprofit corporations that have been established to have the hotel facilities or the large-event facilities should be allowed to offer alcoholic beverages to members of the nonprofit corporations and their guests.

(ii) These nonprofit corporations have been established for the purpose of operating a qualifying hotel or large-event facility private club or other mutual purposes, not for pecuniary gain, but for their mutual convenience and to provide for the preparation and serving to the members and their guests alcoholic beverages owned by the members individually or in common under a locker, pool, or revolving fund system.

(b)(1) In order to clarify the alcoholic beverage control laws of this state and to regulate and prohibit the sale of alcoholic beverages in violation of the provisions of this subchapter and other applicable alcoholic beverage control laws of this state, the General Assembly determines that the preparation, mixing, and serving of mixed drinks, beer, and wine for consumption only on the premises of a private club as defined in § 3-9-202(14) by the members thereof and their guests and the making of a charge for such services shall not be deemed to be a sale or be in violation of any law of this state prohibiting the manufacture, sale, barter, loan, or giving away of intoxicating liquor whenever:

(A) The alcoholic beverages, beer, and wine so consumed have been furnished or drawn from private stocks thereof belonging to such members, individually or in common under a so-called locker, pool, or

revolving fund system and are replenished only at the expense of such members; and

(B) The private club has acquired a permit from the Alcoholic Beverage Control Board, in such form as the board may appropriately determine.

(2)(A) A private club may serve any alcoholic beverage furnished or drawn under the provisions of subdivision (b)(1) of this section on the golf course on which the private club is located when the private club is hosting a professional golf tournament or other charitable golf tournament sponsored by a charitable organization described in 26 U.S.C. § 501(c)(3) and the Director of the Alcoholic Beverage Control Division has been notified by the private club at least sixty (60) calendar days prior to the beginning of the event.

(B) Persons attending the event shall be deemed guests of the private club, and the club may serve the alcoholic beverages to the guests for cash.

(C) The director may promulgate regulations he or she deems necessary to implement this subdivision (b)(2).

(c) In order to clarify the alcoholic beverage control laws of this state and to regulate and prohibit the sale of alcoholic beverages in violation of the provisions of this subchapter and other applicable alcoholic beverage control laws of this state, the General Assembly determines that the preparation, mixing, and serving of wine and beer for consumption only by the lodging guests on the premises of a bed and breakfast private club as defined in § 3-9-202(2) and the making of a charge for such services shall not be deemed to be a sale or to be in violation of any law of this state prohibiting the manufacture, sale, barter, loan, or giving away of intoxicating liquor whenever:

(1) The wine and beer so consumed have been furnished or drawn from private stocks belonging to an owner of the bed and breakfast private club and are replenished only at the expense of such owner;

(2) The wine and beer consumed must have been purchased in an Arkansas licensed retail alcoholic beverage store, as authorized by the director;

(3) The average annual volume of wine and beer consumed shall not exceed three (3) gallons per month per guest room; and

(4) The bed and breakfast private club has acquired a permit from the board in such form as the board may appropriately determine.

History. Acts 1969, No. 132, § 10; **Amendments.** The 2011 amendment A.S.A. 1947, § 48-1410; Acts 1999, No. 1063, § 2; 2001, No. 584, § 1; 2003, No. 1813, § 2; 2011, No. 1194, § 1. inserted (a)(3).

3-9-222. Private clubs — Procedure for obtaining permit.

(a) Application for a permit to operate as a private club may be made to the Director of the Alcoholic Beverage Control Division in accordance with the rules of the Alcoholic Beverage Control Board.

(b)(1) The application for a private club shall be accompanied by an annual permit fee of one thousand five hundred dollars (\$1,500).

(2) The application for a bed and breakfast private club shall be accompanied by an annual permit fee of seventy-five dollars (\$75.00).

(3) In an area in which the sale of intoxicating liquor has not been authorized by local option as provided under § 3-8-201 et seq., the application for a private club permit shall be accompanied by an additional application fee of one thousand five hundred dollars (\$1,500).

(c)(1) After filing an acceptable application with the director, the applicant shall cause to be published at least one (1) time each week for four (4) consecutive weeks in a legal newspaper of general circulation in the city in which the premises are situated or, if the premises are not in a city, in a newspaper of general circulation for the locality where the business is to be conducted, a notice that the applicant has applied for a permit to dispense alcoholic beverages on the premises.

(2) The notice shall be in such form as the director shall prescribe by rule or order and shall be verified.

(3) The notice shall give the names of the managing agent and the nonprofit corporation or, in the case of a bed and breakfast private club, the name of the business owner, and shall state:

(A) That the manager, or in the case of a bed and breakfast private club, the owner, at least one (1) partner, or the majority stockholder is a citizen of Arkansas;

(B) That he or she is of good moral character;

(C) That he or she has never been convicted of a felony or had a license to sell or dispense alcoholic beverages revoked within the five (5) years preceding the date of the notice; and

(D) That he or she has never been convicted of violating the laws of this state or of any other state governing the sale or dispensing of alcoholic beverages.

(d)(1) Within five (5) days after filing an application for a permit to dispense alcoholic beverages on the premises, a notice of the application shall be posted in a conspicuous place at the entrance to the premises.

(2) The applicant shall notify the director of the date when the notice is first posted.

(3) No permit shall be issued to any applicant until proper notice has been so posted on the premises for at least thirty (30) consecutive days.

(4)(A) The notice shall be in such form as the director shall prescribe by rule or order.

(B) The notice shall be:

(i) At least eleven inches (11") in width and seventeen inches (17") in height; and

(ii) Printed in black lettering on a yellow background.

(e)(1) Upon receipt by the director of an application for a permit, written notice thereof, which shall include a copy of the application, the application shall immediately be mailed by the director to the sheriff, chief of police, if located within a city, prosecuting attorney of the locality in which the premises are situated, and city board of directors

or other governing body of the city in which the premises are situated if within an incorporated area. The provisions of this section shall be retroactive to July 28, 1995.

(2) No license shall be issued by the director until at least thirty (30) days have passed from the mailing by the director of the notices required by this section.

(3) Upon receipt by the director within the thirty (30) days of a protest against the issuance of a permit by a governing official of the city or county to whom the notice of an application for permit has been mailed, the director shall not issue the license until he or she has held a public hearing.

(f) Upon the director's determining that the applicant is qualified hereunder and that the application is in the public interest, a permit may be issued as authorized in this section.

History. Acts 1969, No. 132, § 10; 1975 (Extended Sess., 1976), No. 1016, § 1; A.S.A. 1947, § 48-1410; reen. Acts 1987, No. 949, § 1; 1989, No. 297, § 1; 1997, No. 1010, § 3; 1997, No. 1060, § 3; 1999, No. 1063, § 3; 2007, No. 735, § 3; 2009, No. 294, § 22; 2009, No. 763, § 5.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment by No. 294, in (b), substituted "one thousand five hundred dollars (\$1,500)" for "five hundred dollars (\$500)" in (b)(1), and inserted (b)(3).

The 2009 amendment by No. 763 substituted "an area" for "a county" and "additional application" for "annual permit" in (b)(3).

CASE NOTES

Cited: Barnes v. Ark. Dep't of Fin. & Admin., 2010 Ark. App. 436, — S.W.3d — (2010).

3-9-226. Private clubs — Advertising.

(a) As used in this section, "intoxicating liquor" means a beverage containing more than one-half of one percent (0.5%) of alcohol by weight.

(b) It shall be unlawful for a private club, as defined in § 3-9-202, to use the advertising media to promote the consumption and use of alcoholic beverages or to advertise or announce the price of service of alcoholic beverages for on-premises consumption in a county where its voters have not authorized the sale of intoxicating liquor in a local option election under Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203, and 3-8-205 — 3-8-209.

(c)(1) A private club, regardless of whether or not the voters in the county authorized the sale of intoxicating liquor in a local option election, shall be entitled to use the advertising media to advertise or announce social functions of general interest, including without limitation:

(A) A golf tournament;

- (B) A charity ball;
- (C) An entertainment event; or
- (D) A similar activity.

(2) The social function shall be held within the confines of club property.

(3) The advertising for the social function shall be preceded by the words "Notice to Members" and the name of the club or organization sponsoring such social activity.

History. Acts 1975, No. 901, § 1; A.S.A. 1947, § 48-955; Acts 2013, No. 527, § 5.

Amendments. The 2013 amendment rewrote the section.

3-9-227. Large attendance facility mixed drink permit.

(a)(1) There is hereby created a large attendance facility mixed drink permit which is to be issued for any large attendance facility, as defined by § 3-9-202(16)(B), in which pari-mutuel wagering has been authorized by law.

(2) Such permits may only be issued in cities of the first class in which the sale of alcoholic beverages is authorized by law.

(b)(1) The attendance qualifications for the large attendance facility mixed drink permit are the same as those currently provided for large attendance facilities as set out in § 3-9-202(16)(B).

(2) The annual fee for the large attendance facility mixed drink permit is three thousand dollars (\$3,000) per fiscal year.

History. Acts 1993, No. 1247, §§ 1, 2; 2009, No. 294, § 23.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 - 2011 renewal and new permit period."

Amendments. The 2009 amendment, in (b), inserted (b)(2), redesignated the remaining text accordingly, deleted "permit fees and" preceding "attendance qualifications" in (b)(1), and made a minor stylistic change.

3-9-236. Permittees — Miscellaneous unlawful practices.

It shall be unlawful and constitute a Class A misdemeanor for any person holding a permit hereunder or his or her agents, servants, or employees knowingly to do any of the following acts:

(1) Serve any alcoholic beverage to a person who is under twenty-one (21) years of age;

(2) Serve any alcoholic beverage to an intoxicated person, to any person who is known to be insane or mentally defective, to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs;

(3) Sell alcoholic beverages at any prohibited time;

(4) Place any sign of any description on the exterior of the permitted premises indicating that alcoholic beverages are sold for consumption therein;

- (5) Misrepresent the brand of any alcoholic beverage sold or offered for sale;
- (6) Keep any alcoholic beverage otherwise than in the bottle or container in which it was purchased;
- (7) Refill or partly refill any bottle or container of alcoholic beverage;
- (8) Dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage;
- (9) Fail to break and destroy by the close of each business day all empty bottles or containers;
- (10) Remove or obliterate any label, mark, or stamp affixed to any bottle or container of alcoholic beverage offered for sale;
- (11) Deliver or sell the contents of any bottles or containers, the label, mark, or stamp upon which has been removed or obliterated;
- (12)(A) Employ any person less than twenty-one (21) years of age in the mixing or serving of alcoholic beverages.
 - (B) Provided, that any permittee that has obtained a permit under the provisions of § 3-9-202(8) or § 3-9-202(16) may employ persons nineteen (19) years of age or older in the serving of alcoholic beverages.
 - (C) Nothing herein shall prohibit a minor eighteen (18) years of age or older to be employed as a musician or to be employed in the preparation or serving of food or in the housekeeping department of any establishment authorized to dispense mixed drinks under this subchapter;
- (13) Allow any immoral, lewd, obscene, indecent, or profane conduct, language, literature, pictures, or materials on the permitted premises;
- (14) Consume or allow the consumption by any employee of intoxicating beverages while on duty;
- (15)(A) Keep on the permitted premises a slot machine or any gambling or gaming device, machine, or apparatus, except as provided in subdivisions (15)(B) and (C) of this section.
 - (B)(i) An event held by a nonprofit organization that is exempt from taxation under § 26 U.S.C. 501(c)(3) shall be exempt from subdivision (15)(A) of this section if:
 - (a) The nonprofit organization registers the event with the Alcoholic Beverage Control Division at least sixty (60) days before the event;
 - (b) All proceeds of the event are for the benefit of the nonprofit organization;
 - (c) The games in the event do not use money but may use some form of play money;
 - (d) No cash or any other item of value is won or awarded as a prize; and
 - (e) The event is for amusement and not for gambling purposes in violation of Arkansas law or Arkansas Constitution, Article 19, § 14.
 - (ii)(a) This subdivision (15)(B) shall apply to only one (1) event held by a nonprofit organization during a calendar year.
 - (b) No licensed premises shall be allowed more than ten (10) events under this subdivision (15)(B) per calendar year.

(iii)(a) A violation of this subdivision (15)(B) by a nonprofit organization is a violation and is punishable by a fine of one thousand dollars (\$1,000).

(b) If a nonprofit organization commits a second violation of this subdivision (15)(B), the nonprofit organization shall be ineligible to sponsor an event under this subdivision (15)(B).

(iv) The division may promulgate appropriate rules to carry out the intent of this subdivision (15)(B).

(C) A gambling or a gaming device, machine, or apparatus under subdivision (15)(A) of this section does not include:

(i) Charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.; or

(ii) A lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.;

(16) Sell any alcoholic beverage unless the beverage is owned outright by the permittee;

(17)(A) Employ a person to serve an alcoholic beverage who has pleaded guilty or nolo contendere to or has been found guilty of:

(i) A violation of a law concerning possession, sale, manufacture, or transportation of intoxicating liquor; or

(ii) A felony and is on probation or serving a suspended sentence as a result of the felony, except as provided under subdivisions (17)(B) and (17)(C) of this section.

(B) A person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is on probation or serving a suspended sentence as a result of the felony may be employed by an on-premise permittee if:

(i) The person works only in a kitchen; and

(ii) Alcoholic beverages are not served out of the kitchen.

(C) A person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is not on probation or serving a suspended sentence as a result of the felony may be employed by an on-premise permittee in any capacity;

(18) Violate any rule, regulation, or order of the Alcoholic Beverage Control Board;

(19) Fail to report all taxes applicable to the sale of alcoholic beverages for on-premises consumption; or

(20) Possess on the permitted premises or sell or dispense any alcoholic beverages upon which the federal or state taxes have not been paid.

History. Acts 1969, No. 132, § 14; 1971, No. 467, § 1; A.S.A. 1947, § 48-1414; Acts 2003, No. 1807, § 2; 2005, No. 1170, § 1; 2005, No. 1994, § 195; 2009, No. 605, § 12; 2009, No. 606, § 12; 2013, No. 527, § 5[6].

Amendments. The 2009 amendment by identical acts Nos. 605 and 606 substituted “subdivisions (15)(B)-(C)” for “subdi-

vision (15)(B)” in (15)(A); redesignated (15)(B); substituted “this subdivision (15)(B)” for “this section” or “this subdivision” throughout (15)(B); redesignated former (15)(C)-(E); substituted “by a nonprofit organization is a violation” for “is a misdemeanor” in (15)(B)(iii)(a); and inserted (15)(C).

The 2013 amendment rewrote (17).

3-9-239. Small restaurant permit.

(a) A restaurant that purchases five hundred sixty liters (560 l) of spirituous liquors or less from an entity holding a wholesale liquor permit may apply to the Director of the Alcoholic Beverage Control Division for a small restaurant permit.

(b)(1) If the small restaurant permit holder purchases more than five hundred sixty liters (560 l) of spirituous liquors in a fiscal year, the small restaurant permit holder shall apply for a permit under § 3-9-212.

(2) A small restaurant permit holder shall pay the difference between the small restaurant permit fee and the permit fee authorized under § 3-9-212 for the current fiscal year.

(3) The small restaurant permit holder shall submit documentation from the wholesalers itemizing the amount of spirituous liquors purchased from each wholesaler.

(c) The annual fee for the small restaurant permit is three hundred dollars (\$300) per fiscal year.

History. Acts 2009, No. 763, § 2.

kansas Code Revision Commission reas-

A.C.R.C. Notes. Acts 2009, No. 763,

signed Acts 2009, No. 763, § 2, to § 3-9-

§ 2, assigned this section as § 3-4-608.

239.

However, pursuant to § 1-2-303, the Ar-

3-9-240. Hotel or large-event facility private club permit.

(a)(1) An application for a hotel or large-event facility private club permit shall be in writing and shall provide information concerning the applicant for the hotel or large-event facility private club permit and the premises to be used by the applicant as the Director of the Alcoholic Beverage Control Division requires.

(2) A hotel or large-event facility private club permit may be issued only in a county or a territory of a county that does not allow the public retail sale of intoxicating liquors as provided under § 3-8-201.

(b) The application for a hotel or large-event facility private club permit shall be accompanied by a check or money order for the amount required by this section for the hotel or large-event facility private club permit.

(c) A hotel or large-event facility private club permit application shall contain a description of the premises permitted and provide proof that the space leased has at least:

(1) Eighty (80) lodging rooms and five thousand square feet (5,000 sq. ft.) of public meeting, banquet, or restaurant space from a hotel; or

(2) Ten thousand square feet (10,000 sq. ft.) of interior or exterior public meeting, banquet, exhibit hall, or restaurant space from a large-event facility.

(d) If the director grants an application for a hotel or large-event facility private club permit, he or she shall issue a hotel or large-event facility private club permit in a form as determined by the rules of the Alcoholic Beverage Control Division.

(e)(1) A hotel or large-event facility private club permit authorizes the dispensing, service, and consumption of alcoholic beverages by and to members and their guests on the premises of a hotel or large-event facility private club permittee for on-premises consumption at a hotel or large-event facility leased to a hotel or large-event facility private club permittee.

(2) The areas of a hotel or large-event facility that may be leased to a hotel or large-event facility private club permittee for purposes of a hotel or large-event facility private club permit include without limitation:

- (A) Sleeping rooms;
- (B) Pool-side bars;
- (C) Banquet facilities;
- (D) Restaurants;
- (E) Lobbies;
- (F) Exhibit halls;
- (G) Patios; and
- (H) Outdoor gardens.

(3) Members of the hotel or large-event facility private club permittee that holds a hotel or large-event facility private club permit may move from one (1) area to another area designated under subdivision (e)(2) of this section while consuming alcoholic beverages.

(f)(1) A hotel or large-event facility that leases all or a portion of its premises to a hotel or large-event facility private club permittee shall clearly identify the areas of the hotel or large-event facility that are leased to the hotel or large-event facility private club permittee.

(2)(A) Areas leased by a hotel or large-event facility private club permittee that contain articles of historic interest or art or dramatic or musical presentations shall be open to members of the hotel or large-event facility private club permittee and to nonmembers of the hotel or large-event facility private club permittee.

(B) However, a person must be a member or the guest of a member of the hotel or large-event facility private club permittee to consume or possess alcoholic beverages dispensed by the hotel or large-event facility private club permittee.

(3) Persons under twenty-one (21) years of age may be allowed on the premises of the hotel or large-event facility private club permittee.

(4)(A) A hotel holding a hotel or large-event facility private club permit under this section may lease a sleeping room to a hotel or large-event facility private club permittee for the service of alcoholic beverages.

(B) The hotel holding a hotel or large-event facility private club permit may use room service to serve the alcoholic beverage.

(C) The hotel holding a hotel or large-event facility private club permit may stock the leased sleeping room with alcoholic beverages, and the hotel or large-event facility private club permittee through the hotel's employees shall inventory the alcoholic beverages in the leased sleeping room.

(D) Sleeping rooms that are solely occupied by persons twenty (20) years of age and under shall not receive alcoholic beverages through room service or be stocked with alcoholic beverages.

(5) A hotel or large-event facility that leases space to a hotel or large-event facility private club permittee shall provide a means of entering the hotel or large-event facility to allow a person to knowingly decide if he or she would like to become a member of the hotel or large-event facility private club permittee.

(g)(1) A hotel leasing its premises to a hotel or large-event facility private club permittee may include a membership application to the hotel or large-event facility private club permittee as part of its registration materials.

(2) A guest of a hotel becoming a member of the hotel or large-event facility private club permittee shall receive a membership card.

(3) A hotel that includes a membership application to the hotel or large-event facility private club permittee as part of its registration materials shall retain the registration materials as required by the division.

(4) A hotel or large-event facility private club permittee may refuse a membership or revoke a membership of a person that does not abide by the hotel or large-event facility private club permittee rules.

(h)(1)(A) The application and renewal fee for a hotel for a hotel or large-event facility private club permit is one thousand five hundred dollars (\$1,500) per year payable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(B) In an area in which the sale of intoxicating liquor has not been authorized by local option as provided under § 3-8-201 et seq., the application for a hotel or large-event facility private club permit shall be accompanied by an additional application fee of one thousand five hundred dollars (\$1,500).

(2) The application and renewal fee for a large-event facility for a hotel or large-event facility private club permit is two thousand five hundred dollars (\$2,500) per year payable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(i) The director shall promulgate rules to enforce this section.

History. Acts 2011, No. 1194, § 3; 2013, No. 1123, §§ 2, 3.

Amendments. The 2013 amendment inserted "holding a hotel or large-event facility private club permit" in (f)(4)(B) and (f)(4)(C); in (h)(1)(A), substituted "the renewal fee for" for "by" and "is" for "shall

be accompanied by an annual permit fee of" and inserted "per year payable on or before June 30 of each calendar year for the fiscal year beginning July 1"; and deleted (h)(1)(C) and redesignated the remaining subdivisions accordingly.

3-9-241. Private clubs — Posting information about the National Human Trafficking Resource Center Hotline.

An entity governed by this subchapter shall post information about the National Human Trafficking Resource Center Hotline as required under § 12-19-102.

History. Acts 2013, No. 1157, § 1.

SUBCHAPTER 3 — WINE

SECTION.

3-9-301. Definitions.

3-9-305. License applications — Qualifications.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1100, § 5: Apr. 11, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the law regarding the definition of "restaurant" is necessary to avoid ambiguity in state law and the Arkansas Beverage Control Division's rules. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

3-9-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Director" means the Director of the Alcoholic Beverage Control Division;

(2) "Guest" means a person who orders and is served a meal inside a restaurant during regular hours;

(3)(A) "License" means a license to sell wine in a restaurant or cafe.

(B) An annual fee of three hundred dollars (\$300) shall be paid for each license or renewal of a license.

(C) All moneys derived from the annual fees shall be deposited into the State Treasury as general revenues to the credit of the State Apportionment Fund, to be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law, and to be

used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.;

(4) "Meal" means food commonly ordered at various hours of the day;

(5) "Person" means any person, firm, partnership, association, or corporation;

(6)(A) "Restaurant" or "cafe" means a place of business that is regularly used to serve a meal to a guest for compensation and has a suitable kitchen facility to serve an entire menu approved by the Alcoholic Beverage Control Division.

(B) The menu shall contain a selection of food and shall not be limited to sandwiches or salads.

(C) The kitchen shall:

(i) Have adequate refrigeration to preserve the food on the menu;

(ii) Be kept in a sanitary condition; and

(iii) Comply with the regulations of the Department of Health.

(D)(i) The Alcoholic Beverage Control Board is authorized and directed to establish appropriate rules and regulations defining "established eating places" to the extent that licenses granted under the provisions of this subchapter shall be issued only to those business establishments whose principal business is serving food for consumption on the premises.

(ii) However, a drive-in shall not be classified as an established eating place; and

(7) "Wine" or "wines" means any port wine, sherry wine, vermouth wine, or other wines, the alcoholic content of which does not exceed twenty-one percent (21%), regardless of whether the wines are manufactured within or without the State of Arkansas.

History. Acts 1965, No. 120, § 1; 1971, No. 441, § 2; 1971, No. 585, § 12; A.S.A. 1947, § 48-626; Acts 2005, No. 1247, § 1; 2009, No. 294, § 24; 2013, No. 1100, §§ 3, 4.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 - 2011 renewal and new permit period."

Amendments. The 2009 amendment redesignated (3), deleted "as defined

herein" following "cafe" in (3)(A), substituted "three hundred dollars (\$300)" for "fifty dollars (\$50.00)" in (3)(B), and made minor stylistic changes.

The 2013 amendment redesignated former (4)(A) as (6)(A) and rewrote it; inserted present (2), (4), (6)(B), and (6)(C) and redesignated the remaining subdivisions accordingly; and substituted "Alcoholic Beverage Control Board" for "board" in (6)(D)(i).

3-9-305. License applications — Qualifications.

(a) No license shall be issued to any person authorizing the sale of wine at retail for consumption on the premises with food served in any cafe or restaurant unless the person shall file with the Director of the Alcoholic Beverage Control Division a verified application therefor, accompanied by the fee required by law, and shall state in the application that he or she possesses the following qualifications:

(1) The applicant is a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in

which the permit will be operated, or resides within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant has not been convicted of a felony or has not been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or any other state relating to alcoholic beverages;

(3) The applicant has not had revoked within five (5) years next preceding his or her application any license issued to him or her pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(4) The applicant shall be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(5) If the applicant is a copartner, all members of the copartnership must be qualified to obtain a license;

(6)(A)(i) If the applicant is a corporation, the president and directors thereof, any stockholder owning more than five percent (5%) of the stock of such corporation who is not exempted under subdivision (6)(A)(ii) of this section, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(ii) An applicant is not required to state the identity of its shareholders who are not the president or the director when the corporation:

(a) Is publicly traded on a nationally recognized stock exchange; or
(b) Holds at least ten (10) permits issued by the Alcoholic Beverage Control Division for the sale of alcoholic beverages.

(B) The requirement as to residence in the United States or citizenship of the United States shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises; and

(7) The cafe or restaurant making application for the license is primarily engaged in the business of serving foods to the public prepared for consumption on the premises and must be an established eating place within the rules and regulations promulgated by the Alcoholic Beverage Control Board as provided in § 3-9-301(6).

(b) Any misstatement or concealment of fact in the application shall be grounds for the revocation of any license issued pursuant to the application.

History. Acts 1965, No. 120, § 3; A.S.A. 1947, § 48-628; Acts 1989, No. 295, § 2; 1991, No. 606, § 8; 1995, No. 536, § 3; 1999, No. 948, § 2; 2013, No. 325, § 4.

Amendments. The 2013 amendment rewrote (a)(6)(A).

SUBCHAPTER 4 — SUNDAY SALES

SECTION.

3-9-401 — 3-9-413. [Repealed.]

A.C.R.C. Notes. For current laws authorizing on-premises sales of alcoholic beverages on Sundays, see §§ 3-3-210, 3-9-215, and 3-9-216.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act

is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-9-401 — 3-9-413. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 294, § 25. The subchapter was derived from the following sources:

- 3-9-401. Acts 1987, No. 766, § 1.
- 3-9-402. Acts 1987, No. 766, § 2; 1989, No. 837, § 2; 1989, No. 868, § 1.
- 3-9-403. Acts 1987, No. 766, § 11; 2005, No. 1994, § 337.
- 3-9-404. Acts 1987, No. 766, § 3; 1995, No. 563, § 3; 2007, No. 1017, § 3.
- 3-9-405. Acts 1987, No. 766, § 4; 1991, No. 606, § 9.

- 3-9-406. Acts 1987, No. 766, § 5.
- 3-9-407. Acts 1987, No. 766, § 6; 1995, No. 563, § 4; 1999, No. 319, § 3.
- 3-9-408. Acts 1987, No. 766, § 7.
- 3-9-409. Acts 1987, No. 766, § 8.
- 3-9-410. Acts 1987, No. 766, § 9; 1995, No. 563, § 5.
- 3-9-411. Acts 1987, No. 766, § 10; 1995, No. 563, § 6.
- 3-9-412. Acts 1987, No. 766, § 12.
- 3-9-413. Acts 1989, No. 868, § 3.

SUBCHAPTER 5 — SUNDAY BEER AND WINE PERMIT

SECTION.

3-9-501 — 3-9-507. [Repealed.]

A.C.R.C. Notes. For current laws authorizing on-premises sales of alcoholic beverages on Sundays, see §§ 3-3-210, 3-9-215, and 3-9-216.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause pro-

vided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding

the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address violations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-9-501 — 3-9-507. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 294, § 26. The subchapter was derived from the following sources:

3-9-501. Acts 1995, No. 715, § 1; 2005, No. 1247, § 2.

3-9-502. Acts 1995, No. 715, § 5.
3-9-503. Acts 1995, No. 715, § 2.
3-9-504. Acts 1995, No. 715, § 3.
3-9-505. Acts 1995, No. 715, § 4.
3-9-506. Acts 1995, No. 715, § 6.
3-9-507. Acts 1995, No. 715, § 7.

SUBCHAPTER 6 — WINE AND BEER ON-PREMISES LICENSE

SECTION.

3-9-601. Definitions.

3-9-603. License applications — Qualifications.

Effective Dates. Acts 2009, No. 294, § 30: Mar. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that on-premises consumption outlets in the State of Arkansas are not able to compete on an equal and similar basis with outlets located in states surrounding the State of Arkansas; that the State of Arkansas is in need of additional revenues; that only minor adjustments to the violation fine schedule have been made since its passage in 1981; and that this act is immediately necessary to raise additional revenues and to better address vio-

lations committed by Alcoholic Beverage Control Division permit holders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-9-601. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Alcoholic Beverage Control Division;

(2)(A) "License" means a license to sell wine for consumption on the premises.

(B)(i) An annual fee of five hundred dollars (\$500) shall be paid for each license or renewal.

(ii) All moneys derived from such fees shall be deposited in the State Treasury as general revenues to the credit of the State Apportionment Fund;

(3) "Person" means any person, firm, partnership, association, or corporation; and

(4) "Wine" or "wines" means any port, sherry, vermouth, or other wine, the alcoholic content of which does not exceed twenty-one percent (21%) by weight, regardless of whether the wines are manufactured within or without the State of Arkansas.

History. Acts 1999, No. 856, § 1; 2005, No. 1247, § 3; 2009, No. 294, § 27.

A.C.R.C. Notes. Acts 2009, No. 294, § 29, provided: "The permit fees increased or established in this act shall become effective beginning with the 2010 – 2011

renewal and new permit period."

Amendments. The 2009 amendment substituted "five hundred dollars (\$500)" for "three hundred dollars (\$300)" in (2)(B)(i).

3-9-603. License applications — Qualifications.

(a) No license shall be issued to any person authorizing the sale of wine at retail for consumption on the premises unless the person shall file with the Director of the Alcoholic Beverage Control Division a verified application therefor accompanied by the fee required by law and shall state in the application that he or she possesses the following qualifications:

(1) The applicant is a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in which the permit will be operated or resides within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant must be a resident of the State of Arkansas on the date of the application and maintain such residency within the state as a continuing qualification to hold the permit issued by the director;

(3) The applicant has never been convicted of a felony or has not been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or any other state relating to alcoholic beverages;

(4) The applicant has not had revoked within five (5) years immediately preceding his or her application any license issued to him or her pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(5) The applicant must be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(6) If the applicant is a copartner, all members of the copartnership must be qualified to obtain a license; and

(7)(A)(i) If the applicant is a corporation, the president and directors thereof, any stockholder owning more than five percent (5%) of the stock of such corporation who is not exempted under subdivision (a)(7)(A)(ii) of this section, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(ii) An applicant is not required to state the identity of its shareholders who are not the president or the director when a corporation:

- (a) Is publicly traded on a nationally recognized stock exchange; or
- (b) Holds at least ten (10) permits issued by the Alcoholic Beverage Control Division for the sale of alcoholic beverages.

(B) The requirement as to residence shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises.

(b) Any misstatement or concealment of fact in the application shall be grounds for the revocation of any license issued pursuant to the application.

History. Acts 1999, No. 856, § 4; 2013, No. 325, § 5.

Amendments. The 2013 amendment rewrote (a)(7)(A).

